

United States

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Circuit Court of Appeals

For the Ninth Circuit.

Exhibits in C
of Clerk.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

MONTGOMERY WARD & COMPANY,
Respondent.

MONTGOMERY WARD & COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Transcript of Record

In Two Volumes

VOLUME I

Pages 1 to 498

FILED

JUN 9 - 1942

PAUL P. O'BRIEN,
CLERK

Upon Petition for Enforcement and Upon Petition
for Review of An Order of the National
Labor Relations Board

United States
Circuit Court of Appeals

For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
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vs.

MONTGOMERY WARD & COMPANY,
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United States of America
Before the National Labor Relations Board
Nineteenth Region
Case No. XIX C847

Date filed December 13, 1940

In the Matter of MONTGOMERY WARD
& COMPANY, and WAREHOUSEMEN'S
UNION, LOCAL No. 206, Affiliated with I.B.
of T., C., W., and H. of A.

CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Montgomery Ward & Company of Portland, Oregon, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of said Act, in that on April 5, 1940, the union filed a petition for election of all warehouse employees of Montgomery Ward & Company at Portland, Oregon; that a hearing was held in Portland, Oregon, on April 27th, 1940, and that on the 24th day of June, 1940, the National Labor Relations Board directed an election of all warehouse employees at Montgomery Ward & Company, Portland, and that on August 10, 1940, the National Labor Relations Board certified the union as the collective bargaining agent for all warehouse employees of Montgomery Ward & Company at Portland, Oregon. Representatives of the union have had

meetings with the company for the purpose of negotiating a collective bargain agreement between the union and the company, but that the company has consistently refused to negotiate wages, hours and working conditions and has taken the position that anything that the union proposed was contrary to company policy, and has refused to negotiate in good faith with the union; that there have been no actual negotiations and merely discussions, at which time the company has refused to negotiate on any of the terms, but merely states that the union's proposals are contrary to company policy with the result that no bona fide negotiations have taken place, and the company has consistently refused to bona fide negotiate, although often requested to do so.

That on December 7, 1940, because of the company's refusals to negotiate, the union, in concert with the Retail Clerks' Union and the Office Employees Union, which also have been denied negotiations with the company, went on strike; that such strike has been called because of unfair labor practices on the part of the company, namely, to bona fide negotiate.

That the company's refusal to negotiate was for the purpose of discouraging membership and to attempt to coerce employees to drop their union affiliation by well thought out plans of stalling, and to give the impression to the membership that the union could do nothing for them with the conse-

quence that the members would drop out of the union.

That since the strike has been called the company has gone around to individual members homes and threatened them that unless they came back to work at a certain time, they would never work for Montgomery Ward & Company again and they would be blacklisted. That this action on the part of the company was for the purpose of discouraging union membership and to defeat the purposes of collective bargaining.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

WAREHOUSEMEN'S UNION,
LOCAL No. 206, affiliated with
I. B. of T., C., W., & H. of A.,
Labor Temple,
Portland, Oregon.

By J. W. ESTABROOK,
Financial Secretary.

Subscribed and sworn to before me this 10th day of December, 1940, at Portland, Oregon.

(Seal) JAMES LANDYE,
Notary Public for Oregon.

My commission expires Dec. 15, 1943.

United States of America
Before the National Labor Relations Board
Nineteenth Region

Case No. XIX-C-851C

Date filed 12/21/40

In the Matter of MONTGOMERY WARD &
COMPANY and RETAIL CLERKS INTER-
NATIONAL PROTECTIVE ASSOCIATION,
LOCAL UNION No. 1257.

CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Montgomery Ward & Company of Portland, Oregon, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of said Act, in that the Retail Clerks Union represents an overwhelming majority of the retail clerks employed in the company's store in Portland, Oregon. Representatives of the union have had meetings with the company for the purpose of negotiating a collective bargaining agreement between the union and the company, but the company has consistently refused to negotiate wages, hours and working conditions and has taken the position that anything that the union proposed was contrary to company policy, and has refused to negotiate in good faith with the union; that there have been no actual negotiations and merely discussions, at which time the company has refused to

negotiate on any of the terms, but merely states that the union's proposals are contrary to company policy with the result that no bona fide negotiations have taken place, and the company has consistently refused to bona fide negotiate, although often requested to do so.

That on December 7, 1940, because of the company's refusals to negotiate, the union, in concert with the Warehousemen's Union and the Office Employees Union, which also have been denied negotiations with the company, went on strike; that such strike has been called because of unfair labor practices on the part of the company, namely, to bona fide negotiate.

That the company's refusal to negotiate was for the purpose of discouraging membership and to attempt to coerce employees to drop their union affiliation by well thought out plans of stalling, and to give the impression to the membership that the union could do nothing for them with the consequence that the members would drop out of the union.

That since the strike has been called the company has gone around to individual members homes and threatened them that unless they came back to work at a certain time, they would never work for Montgomery Ward & Company again and they would be blacklisted. That this action on the part of the company was for the purpose of discouraging union membership and to defeat the purposes of collective bargaining.

The undersigned further charges that said **unfair** labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

FRED DIXON,
RETAIL CLERKS INTERNATIONAL PROTECTIVE ASSOCIATION, Local No. 1257,
Labor Temple,
Portland, Oregon.

Subscribed and sworn to before me this 19th day of December, 1940, at Portland, Oregon.

(Seal)

JAMES LANDYE,
Notary Public for Oregon.

My commission expires Dec. 15, 1943.

United States of America
Before the National Labor Relations Board

Case No. XIX-C-851

In the Matter of MONTGOMERY WARD & COMPANY and RETAIL CLERKS INTERNATIONAL PROTECTIVE ASSOCIATION, LOCAL UNION No. 1257.

Case No. XIX-C-847

MONTGOMERY WARD & COMPANY and WAREHOUSEMEN'S UNION, LOCAL No. 206, Affiliated with I.B. of T., C., W., and H. of A.

ORDER CONSOLIDATING CASES

A charge, pursuant to Section 10 (b) of the Act, having been filed by Retail Clerks International Protective Association, Local Union No. 1257, in Case No. XIX-C-851, a charge having been duly filed by Warehousemen's Union, Local No. 206, affiliated with I. B. of T., C., W., & H. of A., in Case No. XIX-C-847, and the Board having duly considered the matter, and deeming it necessary in order to effectuate the purposes of the National Labor Relations Act,

It Is Hereby Ordered, pursuant to Article II, Section 36 (b) of National Labor Relations Board Rules and Regulations—Series 2, as amended, that Cases Nos. XIX-C-851 and XIX-C-847 be, and they hereby are, consolidated.

Dated, Washington, D. C., March 28, 1941.

By direction of the Board:

(Seal)

BEATRICE M. STERN,
Acting Secretary.

[Title of Board and Cause.]

CONSOLIDATED COMPLAINT

It having been charged in the above-entitled matters by Warehousemen's Union, Local No. 206, Chartered by the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, affiliated with the American Federation of Labor, and Retail Clerks' International Protective Association, Local No. 1257, affiliated with the American Federation of Labor, that Montgomery Ward & Company, hereinafter called the respondent, has engaged in and is engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 49 Stat. 449, hereinafter referred to as the Act, and an Order having been duly made and entered by the National Labor Relations Board, consolidating the above-entitled matters, the National Labor Relations Board, by the Regional Director for the Nineteenth Region, as agent for the National Labor Relations Board, designated by National Labor Relations Board Rules and Regulations, Series 2, as amended, Article 4, Section 1, hereby issues its Consolidated Complaint and alleges the following:

I.

Montgomery Ward & Company, the respondent, is an Illinois corporation having its principal executive offices in Chicago, Illinois, and is licensed to do business in the State of Oregon, and owns and oper-

ates a mail order house and a retail store at Portland, Oregon.

II.

The respondent is engaged in and at all times hereinafter referred to has been continuously engaged in the business of distribution of merchandise through the media of mail order houses and retail stores. The respondent owns, operates, and maintains 9 mail order houses, 5 mail order warehouses, 260 order offices, and 625 retail stores throughout the United States. Approximately 20,000,000 customers throughout the United States and many foreign countries are served by the company. The company's net sales for the year 1939 amounted to \$474,882,032.00.

III.

In the course and conduct of the business of the respondent in its mail order house and retail store located in Portland, Oregon, the respondent caused about 90 per cent of the merchandise distributed by it to be shipped to Portland, Oregon, from States outside the State of Oregon. About 60 per cent of the customers of the mail order house live outside of the State of Oregon, and a substantial portion of the goods, sold by the respondent in its Portland, Oregon, mail order house is shipped out of the State of Oregon to such customers.

IV.

The Warehousemen's Union, Local No. 206, Chartered by the International Brotherhood of Team-

sters, Chauffeurs, Stablemen and Helpers of America, Affiliated with the American Federation of Labor, and the Retail Clerks' International Protective Association, Local No. 1257, Affiliated with the American Federation of Labor, are labor organizations, within the meaning of Section 2, Subsection 5, of the Act.

V.

All merchandise checkers in the shipping department; all receiving clerks in the receiving department; all employees on the freight elevators; all sorters, completers, and packers, but not billers, in the packing and billing department; all employees of the package opening department, except authenticators; all employees of the central repair unit except those engaged in office work; all employees in the jewelry repair unit engaged in handling merchandise, except watch makers; all employees in the merchandise division except timekeepers and employees engaged in taking orders; all employees in the supply and multigraph department who fill in and stock supplies; all employees who handle merchandise in the operating auditing, stock control, and catalog service departments; all porters; and all employees at the warehouse, excluding supervisory employees, constituting a unit appropriate for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment, in order to insure to said employees the full benefit of their right to self-organization and to collective bargaining, and to otherwise effectuate the policies of the Act.

VI.

On August 10, 1940, Warehousemen's Union, Local No. 206, was certified by the National Labor Relations Board as the representative of the employees in the unit described in Paragraph V, above. By reason of said certification and by virtue of Section 9 (a) of the Act, said Local No. 206, is and at all times since August 10, 1940, has been, the exclusive representative of all employees in said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

VII.

All the retail clerks of respondent employed in its Portland, Oregon, plant who are engaged in selling in the retail store, constitute a unit appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment, in order to insure to said employees the full benefit of their right to self-organization and to collective bargaining, and to otherwise effectuate the policies of the Act.

VIII.

On or before August 6, 1940, and at all times since that date, the majority of the employees in the unit described in Paragraph VII herein, designated and selected Retail Clerks' International Protective Association, Local No. 1257, as their representative for the purposes of collective bargaining with the respondent. By reason of said designation and by

virtue of Section 9 (a) of the Act, said Local No. 1257 is and at all times since August 6, 1940, has been the exclusive representative of all the employees in said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

IX.

The said respondent has ever since on or about November 1, 1940, and specifically on or about November 12, 1940, November 25, 1940, and December 13, 14, and 16, 1940, refused to bargain collectively in good faith with the Warehousemen's Union, Local No. 206, and Retail Clerks' International Protective Association, Local 1257. Said unions had prior thereto been designated by a majority of the respondent's employees in the respective units described above as their representatives for the purpose of negotiating with respondent with relation to rates of pay, wages, hours of employment, and other conditions of employment. That said respondent refused and continues to refuse to bargain in good faith with Warehousemen's Union, Local No. 206, and Retail Clerks' International Protective Association, Local No. 1257, and said respondent has placed numerous obstacles in the way of bargaining in that although each of the unions above-mentioned presented proposed contracts to the respondent, the respondent objected to said contracts and refused to offer any counter proposal.

X.

As a result of said refusal on the part of respondent to bargain collectively in good faith and its refusal to submit counter proposals at the meetings which occurred prior to December 7, 1940, with Warehousemen's Union, Local No. 206, and Retail Clerks' International Protective Association, Local No. 1257, as described in Paragraph IX, above, said unions did on or about December 7, 1940, call a strike and establish picket lines about the premises of said respondent, which strike has continued ever since said date.

XI.

That by the refusal to bargain in good faith with Warehousemen's Union, Local No. 206, and Retail Clerks' International Protective Association, Local No. 1257, and its refusal to submit counter proposals to said unions, since on or about November 1, 1940, as alleged in Paragraph IX, above, the respondent did thereby engage in and is thereby engaging in unfair labor practices, within the meaning of Section 8, Subsection 5, of said Act.

XII.

That by refusal to bargain collectively in good faith as set out in Paragraph IX, and by various other acts, the respondent did interfere with, restrain, and coerce its employees in the exercise of the rights to organize and bargain collectively through representatives of their own choosing and by so doing, did engage in and is continuing to engage in unfair

labor practices, within the meaning of Section 8, Subdivisions (1) and (5) of said Act.

XIII.

The activities of the respondent alleged in Paragraphs IX, XI, and XII, occurring in connection with operations of the respondent as described in Paragraphs I, II, and III, herein, have a close, intimate, and substantial relation to trade, traffic, and commerce among several States of the United States and have led to and tend to lead to labor disputes burdening and obstructing interstate commerce and the free flow thereof.

XIV.

That the aforesaid acts of the respondent as set forth in Paragraph IX, XI, and XII, constitute unfair labor practices affecting commerce within the meaning of Section 8, Subdivisions (1) and (5) and Section 2, Subdivisions (6) and (7) of said Act.

Wherefore, the National Labor Relations Board on the 31st day of March, 1941, issues its complaint against the Montgomery Ward & Company, the respondent herein.

(Seal)

ELWYN J. EAGEN,
Regional Director,
National Labor Relations
Board,
Nineteenth Region,
407 U. S. Court House
Seattle, Washington.

[Title of Board and Cause.]

NOTICE OF HEARING

Please Take Notice that on the 14th day of April 1941, at ten o'clock in the forenoon in a court room of the Federal Court House, Portland, Oregon, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner to be designated by it in accordance with the Rules and Regulations, Series 2, as amended, Article II, Section 23, on the allegations set forth in the Consolidated Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Nineteenth Region, acting in this matter as agent of the National Relations Board, an answer to the Consolidated Complaint within ten (10) days of service of said Consolidated Complaint.

Enclosed herewith for your information is a copy of Rules and Regulations, Series 2, as amended, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

In Witness Whereof the National Labor Relations Board has caused this, its notice of hearing, to be signed by the Regional Director for the Nine-

teenth Region on the 31st day of March 1941.

(Seal)

ELWYN J. EAGEN,

Regional Director, National
Labor Relations Board,
Nineteenth Region
407 U. S. Court House,
Seattle, Washington.

[Title of Board and Cause.]

ANSWER

Comes now Montgomery Ward & Co., Incorporated, respondent herein, and for its Answer to the Consolidated Complaint states the following:

I.

It admits the allegations of numbered paragraph I of the Consolidated Complaint.

II.

It admits the allegations contained in paragraph II of the Consolidated Complaint, except as inconsistent with the facts hereinafter stated. The respondent in the operation of its business of selling at retail through mail order and retail stores operated on January 31, 1941 nine mail order houses, 650 retail stores, and 206 mail order sales units located in the several states of the United States and its territories. The respondent's net sales for the fiscal year ended January 31, 1941 amounted to \$515,910,915.00.

III.

The respondent admits the allegations of paragraph III of the said Consolidated Complaint.

IV.

The respondent admits the allegations of paragraph IV of said Consolidated Complaint.

V.

The respondent denies the allegations set forth in paragraph V of the said Consolidated Complaint. The respondent further alleges that the employees described in said paragraph V of the Consolidated Complaint do not constitute an appropriate unit for purposes of collective bargaining for the following among other reasons, to wit: that said employees are not employed in a single department of the respondent and are not under a single management distinct from the management of other employees; that the said employees are employed in different branches of the respondent's operations and have a less close relationship in the matter of hours, rates of pay, and working conditions than the relationship between said employees and other employed by the respondent in its Portland branch; that the employees so defined have no relationship to each other, and the unit so defined is arbitrary and capricious in character and has no relation whatsoever to the purposes of collective bargaining; that the respondent cannot practically deal with the representatives of such a unit of employees with respect to their

rates of pay, hours of labor, and working conditions separate and apart from the rates of pay, hours of labor, and working conditions of others of its employees in the Portland branch; that the practical impossibility of the respondent to deal with such a unit would tend to defeat the purposes of collective bargaining; that the work performed by said employees is integrally related to the work performed by many others of respondent's employees in its Portland branch, and that any problems affecting said unit of employees equally affects other of respondent's employees in its Portland branch; that the work of the said employees is so related to the work of other of respondent's employees in its Portland branch that should any dispute arise between the said employees and the respondent in the course of collective bargaining said dispute would equally affect other employees not included within said unit; that the only units appropriate for purposes of collective bargaining in respondent's Portland branch are first, the unit comprised of all of its employees in the mail order house exclusive of management representatives, and second, all of its employees in its retail store exclusive of the manager and his direct assistants; that the personnel policies of the respondent in the two units described are unitarily determined; that the management policies of the respondent in its two units are uniformly applied; and that the only effective agreements that could be reached as a result of collective

bargaining would be agreements covering all of the employees in the said units.

VI.

The respondent admits in answer to paragraph VI of the said Consolidated Complaint, that Warehousemen's Union, Local No. 206, was certified by the National Labor Relations Board on August 10, 1940 as the representative of the employees described in paragraph V of the said Consolidated Complaint; but respondent further alleges that such unit was not and is not now an appropriate unit for the purposes of collective bargaining for the reasons set forth in paragraph V of this Answer. Respondent denies the other allegations contained in said paragraph VI of the said Consolidated Complaint.

VII.

Respondent denies each and every allegation set forth in paragraph VII of the said Consolidated Complaint and alleges for the reasons set forth in paragraph V above that the only unit appropriate for the purposes of collective bargaining in the respondent's Portland retail store is composed of all of the employees employed in the said retail store exclusive of the manager and his direct assistants.

VIII.

As to the allegations contained in paragraph VIII of the said Consolidated Complaint, this respondent has no information sufficient to form a

belief and therefore denies the same and demands strict proof thereof.

IX.

The respondent denies each and every allegation contained in paragraph IX of the said Consolidated Complaint.

X.

In answer to the allegations contained in paragraph X of the said Consolidated Complaint, the respondent admits that on or about December 7, 1940, picket lines were established about the premises of said respondent at Portland, Oregon. Respondent denies each and every allegation of said paragraph X of said Consolidated Complaint except as above admitted. Respondent further alleges that said picket lines were established solely because of the respondent's refusal to agree that any collective bargaining agreement that might be eventually reached with representatives of its employees at Portland, Oregon contain a so-called "closed shop" or "union shop" clause.

XI.

Respondent denies each and every allegation set forth in paragraph XI of said Consolidated Complaint.

XII.

Respondent denies each and every allegation set forth in paragraph XII of said Consolidated Complaint.

XIII.

Respondent denies each and every allegation set forth in paragraph XIII of said Consolidated Complaint.

XIV.

Respondent denies each and every allegation set forth in paragraph XIV of said Consolidated Complaint.

Wherefore, the Respondent respectfully prays that the Complaint against it be dismissed.

**MONTGOMERY WARD & CO.,
INCORPORATED,
STUART S. BALL,**

Secretary,
619 West Chicago Avenue,
Chicago, Illinois.

State of Illinois
County of Cook—ss.

I, Stuart S. Ball, being first duly sworn, on oath depose and state that I am the Secretary of Montgomery Ward & Co., Incorporated, respondent herein, that in such capacity I have affixed my name to the above Answer, and that I have read the contents and believe them to be true.

STUART S. BALL.

Subscribed and sworn to before me this seventh (7th) day of April, 1941.

(Seal) **M. N. KING,**
Notary Public.

My Commission Expires February 8, 1942.

United States of America
Before the National Labor Relations Board

Case No. C-1905

In the Matter of
MONTGOMERY WARD & COMPANY

and

WAREHOUSEMEN'S UNION, LOCAL No. 206,
CHARTERED BY THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUF-
FEURS, STABLEMEN AND HELPERS OF
AMERICA, Affiliated with the American Fed-
eration of Labor.

Case No. C-1906

In the Matter of
MONTGOMERY WARD & COMPANY

and

RETAIL CLERKS' INTERNATIONAL PRO-
TECTIVE ASSOCIATION, LOCAL No. 1257,
Affiliated with the American Federation of
Labor.

Mr. Patrick H. Walker, for the Board.

Mr. Stuart S. Ball, of Evanston, Ill., for the re-
spondent.

Mr. James Landye, of Portland, Oreg., for the
Unions.

Mr. William T. Little, of counsel to the Board.

DECISION AND ORDER

Statement of the Case

Upon charges duly filed by Warehousemen's Union, Local No. 206, chartered by International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, affiliated with the American Federation of Labor, herein called the Warehousemen, and Retail Clerks' International Protective Association, Local No. 1257, affiliated with the American Federation of Labor, herein called the Retail Clerks,¹ and collectively called the Unions, the National Labor Relations Board, herein called the Board, by the Regional Director for the Nineteenth Region (Seattle, Washington), issued a consolidated complaint² dated March 31, 1941, against Montgomery Ward & Company, Portland, Oregon, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing, were duly served upon the respondent, the Warehousemen, and the Retail Clerks.

The complaint, as amended at the hearing, alleged

(1) The Warehousemen filed a charge on December 13 and the Retail Clerks on December 21, 1940.

(2) The Board, on March 28, 1941, ordered that Cases Nos. C-1905 and C-1906 be consolidated.

in substance: (1) that the respondent, on or about November 12 and 25, and December 13, 14, and 16, 1940, refused to bargain collectively with the Warehousemen, which had been certified by the Board³ as the representative of the employees in an appropriate unit, and with the Retail Clerks, which represented a majority of the employees in an appropriate unit; (2) that on or about December 7, 1940, the Unions called a strike because of the respondent's refusal to bargain collectively; and (3) that the respondent by its refusal to bargain and by other acts interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. On April 8, 1941, the respondent filed its answer, denying that it had engaged in the alleged unfair labor practices.

Pursuant to notice a hearing was held at Portland, Oregon, from April 14 to 17, 1941, before George Bokar, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Unions were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the hearing, the counsel for the Board moved to amend the complaint with regard to the unit claimed to be appropriate by the Retail Clerks. He further moved

(3) Matter of Montgomery Ward & Company and Warehousemen's Union, Local No. 206, 26 N.L.R.B., No. 46.

that the pleadings be conformed to the proof. These motions were granted. At the conclusion of the hearing, counsel for the respondent moved to dismiss the complaint. Decision on this motion was reserved and denied by the Trial Examiner in his Intermediate Report. During the course of the hearing, the Trial Examiner made several rulings on other motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On June 11, 1941, the Trial Examiner issued his Intermediate Report, copies of which were duly served upon the respondent and the Unions. In his Intermediate Report, the Trial Examiner found that the respondent had engaged in unfair labor practices within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the Act and recommended that the respondent cease and desist from such unfair labor practices, and take certain affirmative action designed to effectuate the policies of the Act.

Thereafter, the respondent filed a brief and exceptions to the Intermediate Report. Pursuant to notice duly served upon the respondent and the Unions, a hearing for the purpose of oral argument was held at Washington, D. C., on August 5, 1941. The respondent was represented by counsel and presented oral argument. The Unions did not appear. The Board has considered the respondent's

exceptions to the Intermediate Report, and its brief in support thereof, and insofar as the exceptions are inconsistent with the findings, conclusions, and order set forth below, finds them to be without merit.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. The business of the respondent

The respondent, an Illinois corporation with its principal office in Chicago, Illinois, is engaged in the sale and distribution of merchandise through mail-order houses and retail stores. It owns, operates, and maintains 9 mail-order houses, 650 retail stores, and 206 mail order sales units throughout the United States. The respondent's net sales for the fiscal year ended January 31, 1941, amounted to \$515,910,915.

This proceeding involves only the employees in Portland, Oregon, where the respondent operates a mail-order house and a retail store. Approximately 90 percent of the merchandise distributed by the mail-order house and the retail store is shipped to Portland from outside the State of Oregon. The retail-store sales amount to about \$3,000,000 annually, the mail-order house sales to about \$13,000,000 annually. Approximately 60 percent of the sales made by the mail-order house and about one-half percent of the retail-store sales are delivered to customers who live outside the State of Oregon. At

the time of the hearing, the respondent employed about 1,200 persons in the mail-order house and 175 in the retail store. The respondent denies the Board's jurisdiction over the retail store, but we find such contention to be without merit.⁴

II. The organizations involved

Warehousemen's Union, Local No. 206, chartered by International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, is a labor organization affiliated with the American Federation of Labor. It admits to membership warehouse employees of the respondent.

Retail Clerks' International Protective Association, Local No. 1257, is a labor organization affiliated with the American Federation of Labor. It admits to membership employees of the respondent engaged in selling and handling merchandise.

III. The unfair labor practices

A. The refusals to bargain collectively

1. The appropriate unit

In the Matter of Montgomery Ward & Company and Warehousemen's Union, Local No. 206,⁵ we found that all merchandise checkers in the shipping

(4) In another proceeding the Board assumed jurisdiction over employees of the retail store. Matter of Montgomery Ward & Company and Reuben Litzenberger et al., 9 N.L.R.B. 538, enf'd Montgomery Ward & Company v. National Labor Relations Board, 107 F. (2d) 555 (C.C.A. 7).

(5) 24 N.L.R.B., No. 100.

department; all receiving clerks in the receiving department; all employees on the freight elevators; all sorters, completers, and packers, but not billers, in the packing and billing department; all employees of the package-opening department, except authenticators; all employees of the central-repair unit except those engaged in office work; all employees in the jewelry-repair unit engaged in handling merchandise, *except* watchmakers; all employees in the merchandise division except time-keepers and employees engaged in taking orders; all employees in the supply and multigraph department who fill in and stock supplies; all employees who handle merchandise in the operating, auditing, stock-control, and catalog-service departments; all porters; and all employees at the warehouse, excluding supervisory employees, constitute an appropriate unit. The respondent adduced no evidence at the hearing in the present proceeding which would cause us to deviate from our former decision,⁶ and we accordingly find that the employees within the unit found appropriate in the earlier case at all times herein material constituted and now constitute a unit appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, and that said unit insures to employees of the respondent the full benefit of their

(6) At the hearing in the present proceeding the respondent made substantially the same contentions that it made in the earlier representation case.

right to self-organization and to collective bargaining and otherwise effectuates the policies of the Act.

The unit claimed by the Retail Clerks has not been the subject of prior determination. The Retail Clerks claims that all retail clerks engaged in handling or selling merchandise, including display helpers, tire mounters, stock men, order fillers, markers, messengers, outside salesmen, and floor cashiers, exclusive of supervisory employees, constitute an appropriate unit. The respondent claims that all the employees of the retail store, exclusive of the manager and his direct assistants, constitute an appropriate unit. The unit proposed by the Retail Clerks differs from that proposed by the respondent primarily in that it excludes from the unit employees who are eligible for membership in other labor organizations affiliated with the American Federation of Labor and are therefore ineligible for membership in the Retail Clerks. Thus, for the most part, the employees excluded from the unit proposed by the Retail Clerks are eligible for membership in the Office Employees Union, a labor organization likewise affiliated with the American Federation of Labor, which has been organizing these employees. Organization of the employees has proceeded upon the basis of the Retail Clerks' unit and it appears to be the only labor organization among the employees herein involved. The respondent has not entered into written collective bargaining agreements with any labor organization at its mail-order houses or retail stores. As appears below, the re-

spondent negotiated jointly with the Retail Clerks and the Office Employees Union. Each organization, however, represented different categories of employees.⁷

In the past we have generally excluded office employees from units composed of non-office workers.⁸ In view of the negotiations, the fact that the employees sought to be excluded from the unit are within the jurisdiction of other labor organizations, and the further fact that the three labor organizations herein named have organized the respondent's employees into three different units, we find that the unit sought by the Retail Clerks is appropriate. Accordingly we find that all retail clerks engaged in handling or selling merchandise, including display helpers, tire mounters, stock men, order fillers, markers, messengers, outside salesmen, and floor cashiers, exclusive of supervisory employees, at all times herein material constituted, and now consti-

(7) The respondent points to a letter sent to it on October 2, 1940, by the Retail Clerks and the Office Employees Union which indicated the two unions' willingness jointly to negotiate and sign one contract to cover the office workers and retail clerks in the retail store, as some proof of the appropriateness of the unit contended for by it. As set forth below, however, separate contracts were submitted by these unions and by the Warehousemen, although joint discussions did take place on all three contracts, on December 13, 14, and 16, 1940.

(8) Cf. *Montgomery Ward & Company, Incorporated and Retail Clerks Int'l. Protective Ass'n., etc.*, 28 N.L.R.B., No. 145.

tute, a unit appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and conditions of employment, and that said unit insures to employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the Act.

2. Representation by the Unions of a majority in the appropriate units.

The Warehousemen was certified by the Board on August 10, 1940, as the exclusive representative of the unit of warehouse employees, found in the prior representation proceeding and above to be appropriate. Accordingly we find that on August 10, 1940, and at all times thereafter, the Warehousemen was, and now is, the duly designated representative of a majority of the employees in an appropriate unit and, pursuant to Section 9 (a) of the Act, the exclusive representative of all employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

The Retail Clerks commenced organizational activities among the respondent's employees in February or March 1940. Fred Dixon, secretary-treasurer of the Retail Clerks, produced at the hearing all the applications for membership received by this union from employees of the respondent. His testimony that at all times subsequent to August 6, 1940, the Retail Clerks had signed applications from

a majority of the employees within the unit of retail clerks found above to be appropriate is unquestioned. During the negotiations the respondent did not dispute, and in fact accepted, the majority claim made by the Retail Clerks.⁹ The pay roll furnished by the respondent to determine the number of employees within the unit found to be appropriate as to the Retail Clerks is dated December 5, 1940. The number of employees on the pay roll of the retail store subsequent to November 1, 1940, at no time exceeded the number on the December 5 pay roll which shows 217 employees within the appropriate unit, 142 of whom signed applications for membership in the Retail Clerks on or before December 6. Subsequent to December 7, 1940, the Retail Clerks received 46 additional applications.

We find that on August 6, 1940, and at all times thereafter, the Retail Clerks was, and now is, the duly designated representative of a majority of the employees in an appropriate unit and, pursuant to Section 9 (a) of the Act, the exclusive representative of all the employees in such unit for the pur-

(9) When representatives of the respondent and the Retail Clerks formally met for the first time on September 19, 1940, to consider the proposed contract presented by the Retail Clerks, the latter submitted three alternative proposals in respect to its majority claim: (1) a consent Board election, (2) a check by an independent auditor of its applications against the company pay roll, and (3) acceptance of its claim that it represented a majority. The respondent adopted the last alternative.

poses of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The refusals to bargain.

a. Chronology of events

The dates of the principal conferences with the Warehousemen were November 12 and 25, 1940; with the Retail Clerks, September 19, October 22, and November 25, 1940. These conferences were separately conducted with the exception of the one on November 25, in which both unions joined. On December 7, 1940, both unions declared a strike against the respondent and established picket lines, allegedly because of the respondent's refusal to bargain on the dates set forth above. Subsequent to the commencement of the strike, on December 13, 14, and 16, 1940, the respondent met with the Unions in an endeavor to settle the strike and to negotiate agreements. It is alleged that on the dates set forth above the respondent again refused to bargain collectively with the Unions within the meaning of the Act. The strike was still in effect at the time of the hearing.

In order to determine whether or not there was a refusal to bargain it is necessary to discuss these conferences in some detail. First, it should be noted that what transpired at these meetings is substantially not in dispute. Secondly, it should be noted that sometime prior to its first formal meeting with each union, the respondent had received from each

a proposed written contract. The respondent's official in charge of labor relations and collective bargaining for all its stores and mail-order houses is John A. Barr. The latter authorized W. B. Powell, the respondent's West Coast labor representative, with the assistance of E. L. Barth, the Portland retail-store manager, and O. W. Huddleston, the Portland mail-order house manager, to carry on negotiations with the Unions. The principal negotiator for the Warehousemen was J. W. Estabrook, its financial secretary, and for the Retail Clerks, the same Dixon referred to above. Assisting both Unions, at times, was James Landye, their attorney, and other representatives of the Unions.

The respondent met with representatives of the Retail Clerks on September 19. At this meeting the discussion centered chiefly about the questions of the appropriate unit and whether or not the union represented a majority. The respondent stated that it wanted to negotiate a single contract for both the retail clerks and the office employees. In reply to the Retail Clerks' question of whether or not the respondent would sign a contract embodying such terms as might be agreed upon, Powell replied that so far as he knew the respondent had no signed contract with a labor organization and that the parties should leave the question of the signed contract until they had completed negotiations. About October 2, the Retail Clerks and the Office Employees Union informed the respondent that they

would be willing to negotiate one contract for the retail store. The respondent agreed to accept the Retail Clerks' statement that it represented a majority of the clerks.

On October 11, preparatory to the next conference between the Retail Clerks and the respondent, which was held on October 22, Barr instructed Powell as follows:

we stand ready to discuss with the Union each of their demands and to explain clearly and frankly the Company's position in regard to each demand. You may further tell the Unions that they can consider your statement of the Company's position as a counterproposal if they desire; . . . I don't see that we should quibble over the term "counterproposal" and I suspect that, in effect, our statement of the Company's position with regard to any union demand is a counterproposal. To date, however, we have not submitted any formal written counterproposal to a union. If you have a situation arise where you think it would be advisable to submit a formal counterproposal, I would appreciate your getting in touch with me before doing so.

As noted below, throughout the negotiations with both Unions, Powell repeatedly refused the Unions' requests to submit a formal counterproposal setting forth in writing the terms upon which it would be willing to contract with the Unions.

The Retail Clerks' proposed agreement contained 41 sections, chief of which were the demands for a union shop, an increase in wages, observance of seniority, and arbitration of all disputes arising under the terms of the agreement. At the October 22 meeting, the parties got no further than a discussion of the union-shop clause, which Powell rejected as against company policy. The events of this conference are described in Powell's letter of October 24 to Barr, which states in part the following:

Our reply was that we could not agree to Section 1 (union shop clause). We stated that in order to agree to Section 1 we would have to violate our Company policy, which we would not do. Then Dixon said he would have to return to the employees to give them our position and that he did not know what action they would decide to take.

The next day . . . Dixon called and asked if we had any counterproposal to offer . . . I explained that Section 1 proposed that we agree to something which is contrary to the policy of our Company and our counterproposal would be that the work of organizing the employees should be done by the union . . . Also, I called to Mr. Dixon's attention the fact that he decided not to discuss the remaining provisions of the proposed agreement, whereas we had come to the meeting prepared to discuss each provision. He then asked if we had any counter-

proposal to offer as to the entire contract. To this question I replied that there was certainly no reason to talk counterproposal for the entire contract, as the only provision which had been discussed was Section 1.

The next meeting of the respondent with representatives of the Retail Clerks did not take place until November 25, and was held jointly with representatives of the Warehousemen. In the meanwhile, a meeting between the Warehousemen and the respondent had taken place on November 12.

On November 1, 1940, in preparation for the November 12 conference, Barr wrote Powell a letter which set forth the respondent's position on each article of the contract proposed by the Warehousemen. Thus, concerning the proposal that employees who were required to work more than 5 consecutive hours without a meal period should be compensated at overtime rates, Barr stated:

There may be some peculiar situation in Portland at which Article 7 is aimed and I would hesitate to express an opinion without knowing all the facts. It would seem, however, that under normal conditions an employee should not be worked more than five consecutive hours without a meal period.

Concerning Article XI of the Warehousemen's proposal, the first and second sentences of which provided that there should be no strikes or lock-outs during the life of the agreement, and the third

sentence of which exempted certain strikes authorized by the Portland Central Labor Council from the operation of the "no-strike" clause, Barr instructed Powell as follows:

We certainly can have no objection to the first sentence of Article 11. In fact, this is a sentence which we should probably insist upon being included in connection with any agreement. I should say that we have no objection to the second sentence of Article 11, and that the third sentence is one which should be bargained and as to which you should exercise your own judgment on whether to give or not.

The proposed contract of the Warehousemen contained 14 articles, and, as with the Retail Clerks' proposals, the principal demands were for a union shop, an increase in wages, a seniority rule, and arbitration. At the November 12 meeting, each of the 14 articles was discussed, with Powell setting forth the respondent's position on each article. Not one met with his approval. The union's principal demands were rejected as being contrary to "company policy," which in effect meant the then existing practices of the respondent in regard to wages, seniority, hours, and working conditions, and its policy against any form of closed shop and any method of arbitration. Powell did indicate tentative acceptance of some articles of minor importance with certain modifications, particularly where the term as agreed to would not conflict with the status quo.

An example of the type of modification suggested by Powell is contained in Powell's written report to Barr of the meeting of November 12. Thus Powell reported:

Article 3. Section 1 (which provided that five 8-hour days between Monday and Friday should constitute a week's work)—We explained that we could not agree to Section 1 as it is worded. We stated that we could agree to a provision somewhat like this: no employee shall work less than four hours per day; no female employee shall work more than eight hours per day; the work week shall consist of 40 hours of work from Friday to Thursday inclusive excluding Sunday. This statement conforms to our present policy although we did not make the statement that this was our present policy. Mr. Estabrook suggested that we pass over that point for the present.

With regard to the proposals of the Warehousemen's contract that the respondent recognize the Warehousemen as the exclusive representative of the employees within the appropriate unit and that it agree not to discriminate against union members because of their affiliation, the respondent objected that such matters were covered by the Act and did not constitute questions upon which the parties were free to agree or disagree. Upon the Warehousemen's insistence that the recognition clause constituted an important part of the contract, the

respondent offered to include it as a "preliminary whereas clause."

The respondent claimed that its policy was to pay wages as high as or higher than those paid by competitors in the same area. Powell testified that prior to the negotiations he was assured by the personnel manager for the Portland store that the "company's wage policy was being followed." Accordingly, at the November 12 meeting Powell, in reply to the union's proposal for an increase in the scale of wages being paid to warehousemen, submitted a list containing the minimum rates of wages then being paid by the respondent to its warehousemen, and stated that no changes would be made in the existing rates. At this and other meetings, Estabrook disputed the respondent's contention that it was paying as high wages as its competitors.

Despite the fact that Barr had indicated approval of the Warehousemen's proposal that "If employees are worked over five (5) consecutive hours without a meal period, all time in excess of five (5) hours . . . shall be at the overtime rate," Powell took the position at the November 12 conference that "We had no objection to Article 7 providing the Union would agree to change the word 'five' to 'six' which is our present practice." Throughout the negotiations, Powell maintained this position and refused at all times to agree to the Warehousemen's proposal that employees working more than 5 consecutive hours without a meal period be paid at overtime rates.

Although in his discussion with the union, Powell had rejected the third sentence of Article XI discussed above, which provided that certain strikes should be excepted from the no-strike provision of the contract, in his report to Barr he indicated an intention to accede to the Warehousemen in this regard. Thus Powell reported the following:

Before the meeting Mr. Huddleston and I had decided that we could express our agreement with sentences Nos. 1 and 2 but that we would object to sentence No. 3. The conclusion we reached after the meeting was that unless we want to insist upon an unconditional agreement not to strike there will be no harm in agreeing to sentence No. 3 . . .

The discussion concerning counterproposals at the November 12 conference is described in Powell's letter of November 13 to Barr, as follows:

Also, Estabrook asked if we could, in the meantime, prepare a written statement of terms which would be agreeable to the Company. He expressed the belief that we were obligated to submit our position in writing. I answered that it would serve no purpose for us to submit written terms until he could assure us that those terms would be agreeable to the Union. Estabrook then said he did not know whether or not the terms would be agreeable. He said they would have to submit the terms to their membership to find out if the members would agree.

He then repeated his request that we prepare an agreement in writing which will be agreeable to us. He said then they would have something to submit at the meeting of the Union members. I again replied that I did not see any point in our submitting a written proposal until he could assure us definitely that the terms would be agreeable. The meeting then broke up with nothing further being said on this point.

That Powell was troubled about the reasonableness of the position he had taken is evident from the concluding remarks in his letter to Barr, as follows:

I would like to submit this for your consideration. Do you feel that our obligation to bargain in good faith requires that we submit the Company's position in writing? The question of reasonableness is involved here and I have not yet reached a conclusion in my own mind. There is some argument to the effect that if we will state verbally the terms which are agreeable to us we should have no objection to reducing those terms to writing. This seems to be in line with the Court decisions which require that an employer is obligated to sign an agreement where he has reached a verbal agreement with a Union. On the other hand it seems that we are perfectly within our rights to say that there is no reason to submit our terms in writing until we reach a meeting of the minds by verbal discussion. It does seem useless to pre-

sent our terms in writing when we are pretty sure they will not be accepted.

Another point to consider is the Union's statement that they want something in writing to submit to their membership and there is a question as to whether we are obligated to furnish a written statement of terms for that purpose.

As Estabrook will probably call me next week I will appreciate your comments as soon as possible.

The reply of Barr to Powell on November 22 is significant in that it contains the philosophy of the respondent on the subject of collective bargaining, which position it consistently maintained, as set forth below, throughout all its negotiations with the Unions herein:

To date, we have had no situation where we have sought a contract with a union. Therefore, by the very nature of the situation, the initiative lies with the union. We propose to fulfill our obligation to bargain with the unions in good faith, but this does not pass to us "the burden of going forward". The initiative continues to lie with the union throughout the bargaining process. The only thing which will change our status in this regard is a change in our relative economic positions of such nature as to induce us to seek some concession from the union . . .

As Mr. Ball stated, we do not think that the

Act places upon an employer the absolute duty to make counterproposals. This does not mean, however, that we are to take an abnormal or unnatural attitude with regard to counterproposals. We should explain our position on any point being bargained when requested to do so, and in many instances this will, in substance include a counterproposal whether or not it is expressly so labeled . . . Mr. Ball did not mean that counterproposals in the broad sense, should never be made. He only meant that we should not take the initiative in the bargaining process.

To state in different words, we do not want you to feel under abnormal restraint in the statement of the Company's position . . . This is necessary to good faith and we should not be unduly concerned over whether or not our statement of position contains what might be considered a counterproposal. Just keep in mind, however, that it is the union, not the Company, which is seeking an agreement . . .

. . . I will close with a "recapitulation" of some of the high points.

1. The purposes of bargaining are best served by oral negotiations. We need not state our position to the union in writing.

2. The union is seeking something from us. We are not to assume the initiative by volunteering proposals or counterproposals.

3. In discussing individual clauses state that

you have no present objection to clauses which are not objectionable, but do not "agree" to such clauses. You can only agree to a contract as a whole.

4. Insist on a "no-strike" clause without qualifications or exceptions.

5. Whenever in doubt as to what you should do resolve the doubt in favor of the Company. Err on the side of conservatism if you err at all.

6. Do not rush the bargaining process and do not yourself take the initiative in seeking an agreement.

7. Bargain in good faith. State the Company's position on the points raised honestly and frankly. Your statement of position may or may not contain what might be considered as a counterproposal.

8. Whether or not any agreement reached will be reduced to writing and signed can only be determined after an agreement is reached. Prior to that time a discussion of this point is premature.

You're doing a good job, Bill. Keep it up. Keep us advised of what you are doing and contact us immediately if something gets "hot".

Barr's instructions to "Insist on a 'no-strike' clause without qualifications or exceptions" constituted, it will be observed, a repudiation of his earlier instructions which authorized Powell to use his discretion in such matters, and only after

Powell had indicated that he intended to agree to Article XI of the Warehousemen's proposal which provided for certain exceptions to the no-strike clause.

On November 7, 1940, Thomas White, secretary-treasurer of the Western Warehouse Council which consisted of 58 local unions of warehousemen in the 11 Western States, wrote the respondent that it had "up to the present time refused to sign an agreement for the wages, hours and working conditions" of the Warehousemen in Portland, and threatened to take "economic action" unless "labor disputes with Mr. Jack Estabrook of Portland, Oregon," and other representatives of local unions in the Western establishments of the respondent were "settled to the satisfaction of our organizations."

Thereafter, White, Estabrook, and three representatives of the Retail Clerks met with the respondent in Oakland, California, on November 25, 1940. We credit Estabrook's uncontradicted testimony that at the November 25 meeting,

I made the statement, . . . that we tried to negotiate with Mr. Powell and Mr. Huddleston; . . . but we were not getting anywhere, and that we thought we were being stalled, that we had heard so much about company policy that we were getting tired of it, and we wanted to know what it was, if they had a book on company policy, and, if so, we would like to see it, . . . so that we would know better what

to do. They didn't seem to have a book, or seem to be able to furnish us with a book . . . Mr. White and myself volunteered to go to Chicago with Mr. Powell, if it was necessary, in order to negotiate our contract; we stated that we wanted to talk with the people that we were to negotiate with, and up until then we had not been able to . . . He [Powell] said that he would take that under advisement.

Part of the events of the November 25 meeting are described in the following excerpt from Powell's letter of November 26 to Barr:

He [White] wound up his speech with an ultimatum that unless the Company would agree to a union ship (sic) at Portland they were prepared to take joint action against the Company in the eleven Western States. Mr. Estabrook then suggested he would be glad to fly to Chicago to talk with you, if there were some possibility that our policy could be changed. At first they insisted we give them a reply within twenty-four hours, but later agreed to allow us until noon on Thursday, November 28. I will wait until Thursday morning at which time I will call Mr. White in San Francisco and explain that you will be glad to meet with union representatives in Chicago and listen to their argument, but I will not assure him that any change in policy is contemplated at the present time.

Thus it is to be observed that although the respondent had made its decision, as early as November 26, on the Union's suggestion that the negotiations be continued in Chicago, and although the respondent was fully aware of the Union's desire for an early reply, it deliberately delayed its reply to White until November 28.

On December 2, Dixon, the secretary-treasurer of the Retail Clerks, who was unable to attend the November 25 meeting, telephoned Barth, the manager of the respondent's retail store in Portland, and told him that "we were very anxious to bring about a settlement; that our people were getting very anxious; that they thought "that the company was stalling for time," and that the Retail Clerks was willing to withhold strike action if the respondent would arrange for a meeting with them. Barth replied that he would try to induce Powell to come to Portland. It appears that Dixon called Barth again on December 4 or 5 and told him that the strike of the Retail Clerks at Portland would be withheld until December 6 or 7, pending a meeting there between the Retail Clerks and responsible company officials. On December 4 the employees of the respondent's Oakland plant struck. Thereafter Powell remained in Oakland attempting to settle the strike there. On December 5 Barth telephoned Dixon in Portland and told him that he had spoken to Powell and that Powell had stated that negotiations were being carried on in Oakland in behalf of the Retail Clerks. Dixon replied that the

negotiations at Oakland concerned only the Oakland employees of the respondent and that he proposed to negotiate for the Portland employees at Portland. Dixon offered, however, to permit negotiations to be carried on at Oakland in behalf of the Portland employees if it were impossible for the respondent to send a representative to Portland. Hearing nothing further from the respondent on December 6, the members of the Retail Clerks unanimously voted to go on strike at Portland the next day, primarily because of their sentiment that the respondent had refused "to negotiate a contract at Portland." Immediately thereafter the Warehousemen declared a strike at Portland to support the Retail Clerks and because, according to Estabrook, whose testimony we credit, "the [Portland] membership got tired of Montgomery Ward stalling us around." On December 6, prior to the strike at Portland, White had assured Powell that since they were making progress in their Oakland negotiations he would see that no strike action was taken at Portland; but on the next day White informed Powell that he no longer had authority to act for the Retail Clerks at Portland "and that the action which had been taken was out of his control."

On December 13, 14, and 16, Frank Ashe, a conciliator of the United States Department of Labor, and representatives of the unions, including the Office Employees Union, which had joined in the strike at Portland, conferred jointly with the respondent in respect to the Portland employees.

During the December 13 conference, Powell was asked whether the respondent had any proposal to make. He replied "that our proposal or demand at present was that the picket lines be removed and that the employees be allowed to return to work." He added that the "Company had no other proposal to submit nor did the Company intend to make any other demands on the Union." Landye asked whether, if the Unions withdrew their request for a union shop, the respondent would be willing to submit to arbitration the question of what clauses should be included in the contract. The answer was in the negative. Landye then asked if the respondent would agree to the proposed contract submitted by the Warehousemen if the union shop clause were omitted. Powell stated that the respondent could not agree to the remainder of the proposal as it had substantial objections to certain provisions. According to Landye's uncontradicted testimony which we credit, he asked the respondent for a counterproposal on the contracts submitted by the Warehousemen, the Retail Clerks, and the Office Employees Union and that

I stated that I wanted the company to take each section of the union's contracts, and if they agreed, to write it out that way as a section, and if they disagreed, to delete it, and if they had any additions, to put it on the contract . . . Mr. Powell stated that the company was not asking anything from us, and that it was up to us to make proposals that would

please the company; and that he said his conception of negotiations was that the company had no affirmative duty to do anything, and that it was up to the union to please the company. And he stated that they wouldn't submit a counter proposal.

The meeting then broke up. That afternoon Ashe telephoned Powell and suggested another meeting for the following morning. Powell replied "that we [the respondent] had nothing further to submit but that if he [Ashe] felt a further meeting was advisable we would be glad to meet."

Accordingly, the three unions and the respondent met again the following day. Ashe opened the meeting by asking Powell if the respondent "had anything at all in the way of a proposal to submit which might provide a basis for an agreement." Powell replied that the respondent had nothing further to submit other than the statement of its position in regard to each one of the proposals theretofore submitted. Powell was then asked if the respondent would be willing to sign an agreement which merely set out its present policies and practices. According to his own report, Powell replied as follows:

I replied that the question of the form of agreement, that is, whether it should be verbal or written, is premature at this time. I suggested that if we could reach an agreement upon substantial provisions, then that question

should be considered. Allen then stated that if we could reach agreement would we be willing to sign it. I replied that possibly we would but that I thought a discussion of that question was premature.

Estabrook and Dixon then brought up the matter of wages and claimed that the respondent was not paying the prevailing wage. Powell disagreed. Estabrook then mentioned the names of several local concerns, stating that they were paying more for comparable work than the respondent. Estabrook testified that the discussion over wages "died down by the time that I offered to bet something that they paid less than the others."

In reply to Ashe's request that he be permitted to employ a stenographer to take notes on what transpired, the respondent stated that it "would object to such procedure" on the ground that it did not feel the presence of a stenographer would facilitate the discussion." Thereafter the meeting adjourned with the understanding that the parties would meet again on December 16.

At the conference on the 16th, attended by the three unions and the respondent, Estabrook suggested that they go over the Warehousemen's proposed contract article by article. Powell questioned the value of doing so unless the Warehousemen was willing to withdraw its demands in respect to a union shop, seniority, and arbitration. The unions replied that only the respective unions' members

had authority to withdraw the respective union demands, but upon Estabrook's statement that there was a possibility that the demand for a union shop would be withdrawn, they proceeded to discuss the entire contract proposed by the Warehousemen. A similar procedure was followed with respect to the proposed contracts of the Retail Clerks and the Office Employees Union. The respondent took the same position on the principal clauses in dispute, that is, as to a union shop, seniority, increases in wages, and arbitration, as it had done theretofore, although the Unions indicated their willingness to forego the arbitration clauses and receded in other respects from their original demands. The only concessions made by the respondent, with possibly three minor exceptions,¹⁰ were such as would not alter the status quo and conformed to its "policies." In discussing the Warehousemen's proposed agreement, the respondent maintained its earlier position that if the recognition clause "has any place in the agreement it should be

(10) These were all in regard to the Retail Clerks' proposed agreement. The respondent agreed to review regularly the records of all employees, to provide stock help for the women's coat and yardage and blanket departments, and to supply identical garb where required by the respondent. There was no showing whether or not the respondent's agreement to these matters in any way altered the status quo. In Powell's words, "There were not any concessions [on respondent's part] of major importance; there were, I would say, some minor concessions."

in a preliminary 'whereas' clause" and refused altogether to include in the contract a clause providing that the respondent would not discriminate against union members. Although Powell had previously informed Barr that "As a matter of fact we do have working Supervisors in the Portland Plant" and had offered to the Warehousemen at the November 12 conference to pay such working supervisors 3 cents per hour more than the employees under their supervision, Powell, at the conference on December 16, rejected the Warehousemen's proposal that working supervisors be paid 50 cents per day more than other employees, on the asserted ground that "we did not believe we employed persons such as those mentioned" and "we could not grant any concessions in the rate of pay of these people." At the close of the conference, Ashe stated that the clauses of the contracts to which the respondent objected primarily were those providing for any union shop, any increase in wages, a seniority rule, or any form of arbitration, and stated further: "We aren't getting any place; we might as well call it quits." The meeting then adjourned.

b. Concluding Findings

The issue to be determined is whether or not the respondent has fulfilled its duty to bargain collectively with the Unions as required by the Act. In general terms, the scope of that duty appears from our decision in *Matter of Singer Manufactur-*

ing Co. and United Electrical, Radio & Machine Workers of America, etc.,¹¹ wherein we held as follows:

Collective bargaining, as contemplated by the Act, is a procedure looking toward the making of a collective agreement by the employer with the accredited representatives of its employees concerning wages, hours, and other conditions of employment. The duty to bargain collectively, which the Act imposes upon employers, has as its objective the establishment of such a contractual relationship to the end that employment relations may be stabilized and obstruction to the free flow of commerce thus prevented; and, indeed, the protection to organization of employees afforded by the first four subdivisions of Section 8 of the Act is intended to make possible and to implement the stabilization of working conditions through collective bargaining conducted between employers and the freely designated representatives of their employees as equals. The duty to bargain collectively is not limited to the recognition of the employees' representatives qua representatives, or to a meeting and discussion of terms with them. The duty encompasses an obligation to enter into discussion and negotiation with an open and fair mind and with a sincere purpose to find

(11) 24 N.L.R.B., No. 41, enf'd as mod., *Singer Mfg. Co. v. N.L.R.B.*, 119 F. (2d) 131 (C.C.A. 7), cert. den., 61 S. Ct. 1119.

a basis of agreement concerning the issues presented,* and to make contractually binding the understanding upon the terms that are reached.** . . .

Under the Act, the respondent was obliged to bargain with the Unions as exclusive representatives of the employees in the appropriate units hereinabove found,¹² to embody understandings that might be reached with the unions in signed agreements,¹³ and to incorporate into the contracts, upon request, full recognition of the Unions, in express terms, as

*Manifestly, in exploring the possibilities of reaching an agreement the open and fair-mindedness and sincerity of purpose required by the Act contemplates an interchange of ideas, the communication of facts peculiarly within the knowledge of either party, personal persuasion, and willingness to modify demands in accordance with the total situation thus revealed. See *Matter of S. L. Allen & Company, Inc.*, a corporation and Federal Labor Union Local No. 18526, 1 N.L.R.B. 714 at page 728.

***Matter of St. Joseph Stockyards Company and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 159*, 2 N. L. R. B. 39. We have reaffirmed this interpretation of the Act in all subsequent cases involving this question. See *Matter of Westinghouse Electric & Manufacturing Company and United Electrical, Radio and Machine Workers of America*, 22 N. L. R. B., 147, and cases cited in footnote 14, therein . . .

(12) *N. L. R. B. v. Fansteel Metallurgical Corp.*, 306 U. S. 240.

(13) *H. J. Heinz Co. v. N. L. R. B.* 311 U. S. 514.

exclusive bargaining agents.¹⁴ Moreover, the respondent, pursuant to its duty to bargain collectively in good faith, was required to take an active part in the negotiations to the end that agreement should be reached if possible.¹⁵ We are of the

(14) *McQuay-Norris Mfg. Co., v. N.L.R.B.*, 116 F. (2d) 748 (C.C.A. 7), cert. den., 61 S. Ct. 843, enf'g *Matter of McQuay-Norris Mfg. Co. and United Automobile Workers of America*, Local No. 226, 21 N. L. R. B. 709.

(15) Cf., for example, *N.L.R.B. v. Reed & Prince Mfg. Co.*, 118 F. (2d) 874 (C. C. A. 1) cert. den., 61 S. Ct. 1119, where the Court stated:

The respondent . . . was legally bound to confer and negotiate sincerely with the representatives of its employees. It was required to do so with an open mind and a sincere desire to reach an agreement in a spirit of amity and cooperation.

Similarly in *N. L. R. B. v. George P. Pilling & Son Co.*, 119 F. (2d) 32 (C. C. A. 3) the Court stated:

Bargaining presupposes negotiations between parties carried on in good faith. The fair dealing which the service of good faith calls for must be exhibited by the parties in their approach and attitude to the negotiations as well as in their specific treatment of the particular subjects or items for negotiation. For such purpose, there must be common willingness among the parties to discuss freely and fully their respective claims and demands and, when these are opposed, to justify them on reason. When the proffered support fails to persuade or if, for any cause, resistance to the claim remains, it is then that compromise comes into play. But, agreement by way of compromise cannot be ex-

opinion that the respondent failed in a number of respects to comply with its obligation to bargain collectively, as thus defined.

The respondent, although requested to do so, did not agree to embody understandings that might be reached with the Unions in signed contracts. Thus, at the meetings of September 19 and December 16,

pected unless the one rejecting a claim or demand is willing to make counter-suggestion or proposal. And, where that is expressly invited but is refused, in such circumstances the refusal may go to support a want of good faith and, hence, a refusal to bargain. The considerations are especially applicable to negotiations looking to collective bargaining and have been so regarded by the courts. [Citations omitted.]

In *N. L. R. B. v. Highland Park Mfg. Co.*, 110 F. (2d) 632 (C. C. A. 4), the Court stated:

The Act, it is true, does not require that the parties agree; but it does require that they negotiate in good faith with the view of reaching an agreement if possible . . .

In *Globe Cotton Mills v. N. L. R. B.*, 103 F. (2d) 91 (C. C. A. 5), the Court stated:

. . . There is a duty on both sides . . . to enter into discussion with an open and fair mind, and a sincere purpose to find a basis of agreement touching wages and hours and conditions of labor, and if found to embody it in a contract as specific as possible, which shall stand out as a mutual guarantee of conduct, and as a guide for the adjustment of grievances.

In *N. L. R. B. v. The Boss Mfg. Co.*, 118 F. (2d) 187 (C. C. A. 7), the Court said:

Collective bargaining, as contemplated by the Act, is a procedure looking toward the making

Powell refused to agree to sign a written contract, stating that the respondent had never signed a contract with a labor organization and that while it "possibly" might sign a contract, "the question of the form of the agreement, that is, whether it should be oral or written is premature" until "we could reach an agreement upon substantial provisions." Far from being a mere formal part of the agree-

of a collective agreement between the employer and the accredited representative of his employees concerning wages, hours and other conditions of employment. Collective bargaining requires that the parties involved deal with each other with an open and fair mind and sincerely endeavor to overcome obstacles or difficulties existing between the employer and the employees to the end that employment relations may be stabilized and obstruction to the free flow of commerce prevented. [Citations omitted.]

In *Singer Mfg. Co. v. N. L. R. B.*, 119 F. (2d) 131 (C. C. A. 7) cert. den., 61 S. Ct. 1119, the Court observed that the Act constitutes "remedial legislation," placing upon the employer

the duty, in the interest of public welfare, to enter into discussion with its employees with open and fair minds, with sincere purpose to find basis for agreement.

And in *Wilson & Co. v. N. L. R. B.*, 115 F. (2d) 759 (C. C. A. 8), the Court noted as a basis for sustaining the finding of the Board that the employer had not bargained collectively within the meaning of Section 8 (5),

That there was a lack of such cooperation between the management of petitioner and the representative of its employees in collective bargaining as would be likely to avoid future labor difficulties.

ment, the written contract constitutes the very object of collective bargaining, "the absence of which . . . tends to frustrate the end sought by collective bargaining."¹⁶ The refusal of the respondent to agree to grant the Unions the very object of collective bargaining was tantamount to a refusal to bargain altogether.¹⁷ We deem it immaterial in this connection that when the Unions requested signed contracts the parties had not yet reached complete understanding as to what would be included in the contracts¹⁸ and that although the respondent did not agree to reduce understandings to a signed contract, the Unions nevertheless discussed with the respondent proposed wages, hours, and other conditions of employment.¹⁹

(16) *H. J. Heinz Co. v. N. L. R. B.*, 311 U. S. 514.

(17) *Ibid.*

(18) *Cf. N. L. R. B. v. Highland Park Mfg. Co.*, 110 F. (2d) 632 (C. C. A. 4); *N. L. R. B. v. Wilson & Co.*, 115 F. (2d) 759 (C. C. A. 8). In the latter case the Court stated the following: ". . . We do not believe that negotiations which are carried on without any intention of reaching a definite agreement or of reducing to writing any agreement that may be reached, constitute a full compliance with the Act."

(19) *Cf. McQuay-Norris Mfg. Co. v. N. L. R. B.*, 116 F. (2d) 748 (C. C. A. 7), cert. den. 61 S. Ct. 843. The Court, in overruling a similar defense, stated the following: ". . . There could be no genuine bargaining as contemplated by the Statute until complete recognition had been granted as the Act requested . . . [The employer's bargaining with the Union], while limiting its recognition solely to members of the Union, made such bargaining abortive and of little, if any, effect."

Furthermore, at the November 12 and December 16 meetings, the respondent refused to agree to a clause of the Warehousemen's proposed contract by which the respondent promised to recognize it as exclusive representative, on the asserted ground that recognition was a question of fact which neither the Union nor the respondent was free to agree upon. It is true that the respondent offered to include a recognition clause as a "preliminary whereas clause." In our opinion, however, this does not satisfy the respondent's obligation to "bind itself to give exclusive recognition" to the Warehousemen.²⁰ The respondent, again asserting that the matter was "covered by law and is not a subject of agreement," refused at these meetings to insert in the contract with the Warehousemen a clause by which the respondent promised not to discriminate because of union membership. But as Ashe, the Department of Labor Conciliator, pointed out, the only explanation for the respondent's refusal to agree to include this clause in the contract was that it "merely did not want to give the Union the satisfaction of having it there." The Circuit Court of Appeals for the Eighth Circuit pointed out in the *Wilson* case,²¹ that "A refusal to do what reasonable and fair-minded men are ordinarily willing to do, upon re-

(20) *Matter of McQuay-Norris Mfg. Co. and United Automobile Workers of America, Local No. 226*, 21 N. L. R. B. 709, enf'd National Labor Relations Board v. *McQuay-Norris Mfg. Co.*, *ibid.*

(21) See *supra*, footnote 18.

quest, may certainly be taken to be an indication of a lack of proper intent and good faith in collective bargaining." Clauses prohibiting discrimination because of union affiliation are frequently sought by labor organizations to give to the employees a feeling of security in the exercise of the rights guaranteed in the Act,²² and such clauses are not uncommonly embodied in collective bargaining contracts. Upon the entire record, we find that the respondent, without cause, refused upon request to embody the prohibition against union discrimination in a contract, and that the respondent, by this "refusal to do what reasonable and fair-minded men are ordinarily willing to do," demonstrated its refusal to bargain collectively in good faith.

The respondent's declarations abundantly disclose an attitude inconsistent with its obligation actively to cooperate with the Unions and to endeavor to reach understandings with them. As Barr, speaking for the respondent, told its agent, Powell: "... It is the union, not the Company which is seeking an agreement." Accordingly, Powell told the Unions at the December 13 conference that "his conception of negotiations was that the company had no affirmative duty to do anything and that it was up to the Union to please the company." Similarly, the re-

(22) See, for example, *Matter of Singer Mfg. Co. and United Electrical, Radio and Machine Workers of America, etc.*, 24 N. L. R. B., No. 41, enf'd as mod., *Singer Mfg. Co. v. National Labor Relations Board*, *supra*, footnote 15.

spondent in its brief, states that "the duty to bargain is no more . . . than the duty to meet the employee representative and do . . . or say nothing which would make a binding trade agreement impossible of attainment." It takes the affirmative efforts of the two parties, however, to make a collective bargain. The Board and court decisions hereinabove cited clearly establish that the respondent by its negative attitude was refusing to bargain collectively in good faith.

Pursuant to its hypertechnical approach, the respondent was willing to meet with the Unions when requested, listen to their demands, and explain its position thereon. Further than this the respondent refused to go and it persisted, rather, in the view that the obligation of taking further steps rested upon the Unions alone. Thus, the respondent was opposed to submitting to the Unions genuine counterproposals. It is true that Barr, assertedly, did not object to the respondent's explanation of its position "on any point being bargained when requested to do so" even if such explanation did "in substance include a counterproposal." Nevertheless, the respondent objected to taking "the initiative in the bargaining process"; that is, objected to formulating proposed conditions of employment affirmatively, as counterproposals to union demands. That the respondent was opposed to affirmative efforts on its part to find a basis for agreement by means of counterproposals appears also from Barr's statements that

the respondent had at no time sought a contract with a union and that

Therefore, by the very nature of the situation, the initiative lies with the union. We propose to fill our obligation to bargain with the Unions in good faith, but this does not pass to us "the burden of going forward". The initiative continues to lie with the union throughout the bargaining process. The only thing which will change our status in this regard is a change in our relative economic positions of such nature as to induce us to seek some concession from the union . . .

As Mr. Ball stated, we do not think that the Act places upon an employer the absolute duty to make counterproposals . . .

The respondent was at no point willing to assume "the burden of going forward" in the negotiations and was thus unwilling, without reason, to cooperate with the Unions in bringing the collective bargaining negotiations to a successful conclusion. Thus, at the November 12 conference, after the respondent had rejected the Warehousemen's written proposals, the Warehousemen asked the respondent for a written statement of terms which would be agreeable to the respondent. The respondent rejected this request on the asserted ground that written terms would serve no purpose unless the respondent were assured in advance that those terms would be agree-

able to the Union. Although Estabrook, in behalf of the Warehousemen, explained that the union membership would have to pass upon the terms and that written company counterproposals would facilitate submission of the problem to the union membership, the respondent again rejected the request on the specious ground that the terms would have to be acceptable to the Union before the respondent would submit them in writing. Again, at the December 13 conference, the Unions requested and were refused counterproposals. Moreover, in response to the Union's suggestion at that conference that the respondent "take each section of the unions' contracts, and if they agreed, to write it out that way as a section, and if they disagreed, to delete it, and if they had any additions, to put it on the contract . . ." the respondent replied that it was not asking anything of the Unions and that it was up to them to make proposals that would "please the company." The respondent has offered no explanation for its refusal to submit counterproposals or written countersuggestions. We are of the opinion, and find, that the respondent's attitude and conduct with respect to the union requests for counterproposals evidence "a want of good faith and, hence, a refusal to bargain."²³

Also illustrative of the respondent's bad faith in the negotiations is its repeated rejection of union

(23) See the Pilling case, *supra*, footnote 15; also *Globe Cotton Mills v. National Labor Relations Board*, 103 F. (2d) 91 (C. C. A. 5).

proposals on the general ground that they were not consonant with company policy or practice. We are satisfied upon this record that the respondent, in thus relying simply on existing practice as a reason for not agreeing to union proposals, failed to fulfill its obligation "to discuss freely and fully their [the parties'] respective claims and demands and, when these are opposed, to justify them on reason."²⁴

Other conduct of the respondent furnishes further evidence of its refusal to bargain collectively in good faith. It will be recalled that although the respondent was fully aware of the Unions' desire for an early reply to their suggestion at the November 25 meeting that a further conference take place at Chicago, and although the respondent had decided as early as November 26 to agree to the Chicago conference, the respondent deliberately postponed conveying this information to the Unions until November 28. The respondent's inconsistent behavior is also relevant in this connection. For example, although Barr, whose instructions Powell ordinarily followed, indicated that he had no objection to the Warehousemen's proposal that employees working more than 5 hours without a meal period be paid at

(24) See the Pilling case, *supra*, footnote 15; cf. the definition of collective bargaining advanced by the National Mediation Board, 8 L. R. R., No. 24, p. 827, 831: "successful negotiations must necessarily be on the basis of mutual consideration of the merits of the arguments presented by the respective parties."

overtime rates, Powell at all times insisted that the respondent's past policy of not paying overtime for less than 6 consecutive hours' work be followed. Similarly, when Powell indicated to Barr that he might acquiesce in certain exceptions to the proposal forbidding strikes during the contract period, Barr repudiated his prior instructions to Powell to use his own discretion in such matters, and ordered him to "insist on a 'no-strike' clause without qualifications or exceptions." Again, Powell stated to the Unions at the December 16 meeting, in response to a proposal concerning working supervisors, that "we did not believe we employed persons such as those mentioned"; yet he had already acknowledged to Barr that "as a matter of fact we do have working Supervisors in the Portland plant."

Finally, the respondent, as noted below, solicited the individual striking employees to return to work in violation of Section 8 (1) of the Act. The respondent thereby violated its obligation to deal with the Unions as the exclusive representatives of the employees in the appropriate units herein found and such conduct reflects on its good faith in the collective bargaining negotiations.²⁵

(25) *National Labor Relations Board v. Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2), cert. den. 304 U. S. 576; *The M. H. Ritzwoller Company v. National Labor Relations Board*, 114 F. (2d) 432 (C. C. A. 7), enf'g as modified *Matter of The M. H. Ritzwoller Company and Coopers International Union of North America, Local No. 28*, 15 N.L.R.B. 15; *National Labor Relations Board v. Lightner*

Barr's instructions to Powell and the respondent's actions disclose that the respondent, while going through the motions of meeting and conferring with the Unions, was not in fact bargaining collectively. Reviewing the whole congeries of events, we find that the respondent did not, as it was bound to do, "confer and negotiate sincerely with the representatives of its employees . . . with an open mind and a sincere desire to reach an agreement in a spirit of amity and cooperation."²⁶

As above noted, the Unions on December 7 declared a strike at the Portland plant. The strike was still in effect at the time of the hearing. A substantial cause of the strike and its prolongation was the justified feeling of the Unions that the respondent was "stalling"; that is, not fulfilling its obligation to bargain collectively as required by the Act.

We find that on September 19, 1940, and at all times thereafter, the respondent has refused to bargain with the Retail Clerks and the Warehousemen as the exclusive representatives of its employees in appropriate units with respect to rates of pay, wages, hours of employment, and other conditions

Publishing Corp. of Illinois, 113 F. (2d) 621 (C. C. A. 7), enf'g as mod. Matter of Lightner Publishing Corporation of Illinois and Chicago Printing Pressmen's Union No. 3, Chicago Typographical Union No. 16, 12 N. L. R. B. 1255; Matter of Manville Jenckes Corporation and Woonsocket Rayon Company and Independent Textile Union of America, 30 N. L. R. B., No. 60.

(26) See the Reed & Prince case, *supra*, footnote 15.

of employment, and that the respondent has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. We find further that the respondent's refusals to bargain caused and prolonged the strike at Portland, which began on December 7, 1940.

B. Interference, restraint, and coercion

On Sunday, December 8, 1940, the day following the commencement of the strike at Portland, Robinson, superintendent of operations of the mail-order house, called a meeting of the operating superintendents of each floor, handed them a list of the names and telephone numbers of employees who worked under them, and instructed them to transmit to those employees a message as follows:

Since you were not at work today I wanted to let you know that we are operating tomorrow as usual and your job is open for you if you want to come in.

(When you have made the above statement, listen for the employee's reaction to it. Do not make any further statement unless the employee asks some question. It is not possible to set out all the possible questions which you may be asked, but in answering the questions you should confine yourself to a repetition of the thought contained in the quotation above. When questions are asked, you may answer them frankly, but above all, do not in any insist that the employee should come to work or intimate that

their jobs will be in danger. The main purpose of this call is to notify the employee that the plant is operating and his job is waiting for him if he wants to come in.)

From the testimony of W. A. McGowan, operating superintendent of the fifth floor of the mail-order house, it is evident that the above message was delivered to the employees by the respondent's supervisory employees. However, the testimony of three employees, who worked under McGowan, and who did not report for work on December 7, of how McGowan attempted to procure their return to work shows that he went beyond these instructions. Helen Blackburn testified that on the evening of the day the strike was called²⁷ she telephoned McGowan to tell him that she had not been to work that day because she did not want to cross the picket line and that McGowan replied, "that I didn't have to go through the picket line, that I could go through the back way. . . . He said for me to tell the kids that if they weren't there on Monday morning, (December 9), he was going to reinstate [sic] them with new employees."

Robert Fullerton testified that one evening, about the middle of the week following the strike, Mc-

(27) Either McGowan must have received his instructions the day of the strike or this call must have been made on the day following the strike, because Mrs. Blackburn testified that she did her telephoning after she had received a call that the store would be open for operations Monday morning.

Gowan and his wife visited his home for the first time and McGowan stated that "he was just making a friendly call . . . coming around to each and every one that he figured he could trust . . . in order to get them back to work, and to tell them that if they were not there by a certain date, they would have to have their jobs refilled." According to Fullerton, McGowan informed him during the conversation that the respondent "would never go union, that if it did, they would lock the door."

William E. Hough testified that during the first week of the strike he learned that in his absence McGowan had visited his home. He decided to repay the call. According to Hough, McGowan told him—

. . . if I wanted to come back to work that I didn't have to really go through the picket line. I could come around through the back way of the store . . . He said he hated to see me out; . . . he didn't want to see me lose money . . . He said that the store would never go union; that they would lock the store up and send all the books and everything to the Chicago house before they would sign a union contract . . . He told us about Beede and Jack Walker,—those are the two boys working on our floor,—coming around through the back entrance . . . And before I left, he said he would like to have me get hold of as many fellows as I could and talk to them and tell them they could come in the back door . . .

McGowan denied having any telephone conversation with Blackburn, and in effect, denied the aforementioned testimony of Fullerton and Hough. Present at McGowan's home the evening that Hough paid his visit was another employee by the name of John B. Long, who wanted McGowan's advise as to whether to return to work. Long did return to work on December 17, and was in the employment of the respondent at the time he testified in its behalf. Long corroborated the testimony of McGowan as to what had occurred at the latter's home. In his Intermediate Report the Trial Examiner states that he "carefully observed the demeanor of the aforesaid witnesses and was more favorably impressed by Blackburn, Fullerton and Hough than by McGowan and Long." Furthermore, analysis of the testimony of both McGowan and Long reveals certain admissions indicating the substantial accuracy of the testimony of Fullerton and Hough. While McGowan insisted that he told both Hough and Long that he could not advise them as to whether or not they should return to work, nevertheless, he admitted that they did discuss——

about going through the picket line . . . I know that I brought it out in this respect, that Jack Walker and a few of the boys were driving into the parking lot and coming to the plant that way. I personally said that I wouldn't go that way; that I would walk up the ramp to the second floor.

Although McGowan testified that his suggested method meant going through the picket line, it is clear that McGowan was attempting to persuade both employees to return to work. While denying that he made any statement that the respondent "would never go union," McGowan admitted having stated that the respondent would not agree to a closed shop. While claiming that McGowan merely stated that the respondent would not agree to a closed shop, the respondent's witness Long admitted that the statement was made in reply to a question of whether the store "would ever go union." Upon the entire record, we credit the testimony of Blackburn, Fullerton, and Hough as being in substantial accord with the facts, as did the Trial Examiner.

Despite its instructions not to "in any way insist that the employee should come to work or intimate that their jobs will be in danger," the respondent is clearly responsible for McGowan's coercive statements to Blackburn, Fullerton, and Hough.²⁸ Moreover the respondent offered no evidence to show

(28) *International Association of Machinists v. National Labor Relations Board*, 61 S. Ct. 83, aff'g 110 F. (2d) 29 (App. D. C.), enf'g *Matter of The Serrick Corporation and International Union, United Automobile Workers of America, Local No. 459*, 8 N. L. R. B. 621; *H. J. Heinz Co. v. National Labor Relations Board*, 61 S. Ct. 320, aff'g 110 F. (2d) 843 (C. C. A. 6), enf'g *Matter of H. J. Heinz Company and Canning and Pickle Workers, Local No. 325*, affiliated with *Amalgamated Meat Cutters and Butcher Workmen of America, American Federation of Labor*, 10 N. L. R. B. 963.

that any of its employees were under any misapprehension that the respondent was not operating or that their jobs were not open for them if they wanted to work. Further, as we have found above, the strike was caused by the respondent's unlawful refusal to bargain collectively. Under these circumstances and upon the entire record, we find that the respondent, by communicating with the employees directly through its supervisory employees, and by stating to the employees that "we are operating tomorrow as usual and your job is open for you if you want to come in," was seeking to induce the striking employees to desert the Unions and to abandon their concerted activity. We find that by such solicitation and by undercutting in this manner the authority of the Unions to act as the exclusive bargaining agents of the employees in the appropriate units,²⁹ as well as by McGowan's statements to Blackburn, Fullerton, and Hough, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce.

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the

(29) See footnote 25, *supra*.

several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

The Remedy

Having found that the respondent has engaged in unfair labor practices, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act and to restore as nearly as possible the conditions which existed prior to the commission of the unfair labor practices.

Having found that the respondent has refused to bargain collectively with the Retail Clerks and the Warehousemen, we shall order that the respondent, upon request, bargain collectively with the Unions and, if understandings are reached, embody such understandings in signed agreements.

We have found that the unfair labor practices of the respondent caused and prolonged the strike which began on December 7, 1940. In order to restore the status quo as existed prior to the time the respondent committed the unfair labor practices, we shall order the respondent (1) to offer reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, to those employees who went on strike on December 7, 1940, or thereafter, and who have applied for and have not been offered reinstatement, and (2) upon application to offer reinstatement to their former or substantially equiv-

alent positions, without prejudice to their seniority and other rights and privileges, to those employees who went on strike on said date, or thereafter, and who have not previously applied for reinstatement; dismissing if necessary any persons hired by the respondent after December 7, 1940, the date of the strike, and not in the employ of the respondent on said date. If thereupon, because of a reduction in force, there is not sufficient employment available for the employees to be offered reinstatement, all available positions shall be distributed among all employees, without discrimination against any employee because of his union affiliation or activities, following such a system of seniority or other non-discriminatory practice to such extent as has heretofore been applied in the conduct of the respondent's business. Those employees, if any, remaining after such distribution, for whom no employment is immediately available, shall be placed upon a preferential list and offered employment in their former or substantially equivalent positions as such employment becomes **available and** before other persons are hired for such work, in the order determined among them by such system of seniority or other non-discriminatory practice as has heretofore been followed by the respondent.

We shall order the respondent to make whole those employees who went on strike December 7, 1940, or thereafter, and who have applied for and have not been offered reinstatement, for any loss of pay they may have suffered by reason of the

respondent's refusal, if any, to reinstate them, by payment to each of them of a sum of money equal to that which he would normally have earned as wages during the period from five (5) days after the date on which he applied for reinstatement to the date of the respondent's offer of reinstatement or placement upon a preferential list, less his net earnings,³⁰ if any, during such period. We shall also order the respondent to make whole those employees who went out on strike on December 7, 1940, or thereafter, and who have not previously applied for reinstatement for any loss of pay they may suffer by reason of the respondent's refusal, if any, to reinstate them, as provided above, by payment to each of them of a sum of money equal to that which he would normally have earned as wages during the period from five (5) days after the date on which he applied for reinstatement to the date of the

(30) By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for the respondent's discrimination against him and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N.L.R.B.* 311 U.S. 7.

respondent's offer of reinstatement or placement on a preferential list, less his net earnings, if any, during such period.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. Warehousemen's Union, Local No. 206, chartered by International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, and Retail Clerks' International Protective Association, Local No. 1257, both affiliated with the American Federation of Labor, are labor organizations, within the meaning of Section 2 (5) of the Act.

2. All merchandise checkers in the shipping department; all receiving clerks in the receiving department; all employees on the freight elevators; all sorters, completers, and packers, but not billers in the packing and billing department; all employees of the package-opening department except authenticators; all employees of the central-repair unit except those engaged in office work; all employees in the jewelry-repair unit engaged in handling merchandise, except watchmakers; all employees in the merchandise division except timekeepers and employees engaged in taking orders; all employees in the supply and multigraph department who fill in and stock supplies, all employees who handle merchandise in the operating auditing, stock-control, and catalog-service departments; all porters; and all

employees at the warehouse, excluding supervisory employees, have at all times material herein constituted and now constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. Warehousemen's Union, Local No. 206, chartered by International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, is and at all times since August 10, 1940, has been the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. All retail clerks engaged in handling or selling merchandise, including display helpers, tire mounters, stock men, order fillers, markers, messengers, outside salesmen, and floor cashiers, exclusive of supervisory employees, have at all times material herein constituted and now constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

5. Retail Clerks' International Protective Association, Local No. 1257, is and at all times since August 6, 1940, has been the exclusive representative of all the employees in such unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

6. By refusing to bargain collectively with Warehousemen's Union Local No. 206, chartered by the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, and Retail Clerks' International Protective Association,

Local No. 1257, respectively, as the exclusive representatives of its employees in the respective appropriate units, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

7. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

8. The aforesaid labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Montgomery Ward & Company, Portland, Oregon, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Warehousemen's Union, Local No. 206, chartered by International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, as the exclusive representative of all merchandise checkers in the shipping department; all receiving clerks in the receiving department; all employees on the freight

elevators; all sorters, completers, and packers, but not billers in the packing and billing department; all employees of the package-opening department except authenticators; all employees of the central-repair unit except those engaged in office work; all employees in the jewelry-repair unit engaged in handling merchandise, except watchmakers; all employees in the merchandise division except time-keepers and employees engaged in taking orders; all employees in the supply and multigraph department who fill in and stock supplies; all employees who handle merchandise in the operating auditing, stock-control, and catalog-service departments; all porters; and all employees at the warehouse, excluding supervisory employees;

(b) Refusing to bargain collectively with Retail Clerks' International Protective Association, Local No. 1257, as the exclusive representative of all retail clerks engaged in handling or selling merchandise, including display helpers, tire mounters, stock men, order fillers, markers, messengers, outside salesmen, and floor cashiers, exclusive of supervisory employees;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to those employees who went on strike on December 7, 1940, or thereafter, and who have applied for and have not been offered reinstatement, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, in the manner provided in the section entitled "The Remedy" above; and place those employees for whom employment is not immediately available upon a preferential list in the manner set forth in said section, and thereafter, in said manner, offer them employment as it becomes available;

(b) Upon application offer to those employees who went on strike on December 7, 1940, or thereafter, and who have not previously applied for reinstatement, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, in the manner provided in the section entitled "The Remedy" above; and place those employees for whom employment is not immediately available upon a preferential list in the manner set forth in said section, and thereafter, in said manner, offer them employment as it becomes available;

(c) Make whole the employees specified in paragraph 2 (a) above, for any loss of pay they may have suffered by reason of the respondent's refusal, if any, to reinstate them, by payment to each of

them of a sum of money equal to that which he would normally have earned as wages, during the period from five (5) days after the date on which he applied for reinstatement to the date of the respondent's offer of reinstatement or placement upon a preferential list, less his net earnings, if any, during said period;

(d) Make whole the employees specified in paragraph 2 (b) above, for any loss of pay they may suffer by reason of the respondent's refusal, if any, to reinstate them pursuant to paragraph 2 (b) above, by payment to each of them of a sum of money equal to that which he would normally have earned as wages, during the period from five (5) days after the date on which he applies for reinstatement to the date of the respondent's offer of reinstatement or placement upon a preferential list, less his net earnings, if any, during said period;

(e) Upon request, bargain collectively with Warehousemen's Union, Local No. 206, chartered by International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, as the exclusive representative of all merchandise checkers in the shipping department; all receiving clerks in the receiving department; all employees on the freight elevators; all sorters, completers, and packers, but not billers in the packing and billing department; all employees in the package-opening department except authenticators; all employees of the central-repair unit except those engaged in office work; all employees in the jewelry-repair unit en-

gaged in handling merchandise, except watch-makers; all employees in the merchandise division except timekeepers and employees engaged in taking orders; all employees in the supply and multi-graph department who fill in and stock supplies; all employees who handle merchandise in the operating auditing, stock-control, and catalog-service departments; all porters; and all employees at the warehouse, excluding supervisory employees, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached on any such matters, upon request embody such understanding in a signed agreement;

(f) Upon request, bargain collectively with Retail Clerks' International Protective Association, Local No. 1257, as the exclusive representative of all retail clerks engaged in handling or selling merchandise, including display helpers, tire mounters, stock men, order fillers, markers, messengers, outside salesmen, and floor cashiers, exclusive of supervisory employees, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached on any such matters, upon request embody such understanding in a signed agreement;

(g) Post immediately in conspicuous places in its Portland, Oregon, plant, and maintain for a period of not less than sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in

the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), and (c) of this Order; and (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a), (b), (c), (d), (e), and (f) of this Order;

(h) Notify the Regional Director for the Nineteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 29 day of November 1941.

(Seal)

HARRY A. MILLIS

Chairman

WM. M. LEISERSON

Member

NATIONAL LABOR RELATIONS
BOARD

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10108

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

MONTGOMERY WARD & COMPANY,
Respondent.

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR RE-
LATIONS BOARD.

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372, 29 U. S. C. §151 et seq.), respectfully petitions this Court for the enforcement of its order against respondent, Montgomery Ward & Company, Portland, Oregon, and its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Montgomery Ward & Company and Warehousemen's Union, Local No. 206, Chartered by the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Affiliated with the American Federation of Labor, Case No. C-1905," and "In the Matter of Montgomery Ward & Company and Retail Clerks' International Pro-

pective Association, Local No. 1257, Affiliated with the American Federation of Labor, Case No. C-1906.”

In support of this petition, the Board respectfully shows:

(1) Respondent is an Illinois corporation, engaged in business in the State of Oregon, within this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, and including, without limitation, decision and direction of election, certification of representatives, order of consolidation, consolidated complaint and notice of hearing, respondent's answer to the consolidated complaint, hearing for the purpose of taking testimony and receiving other evidence, intermediate report, respondent's exceptions thereto, and order transferring case to the Board, the Board, on November 29, 1941, duly stated its findings of fact, conclusions of law and issued an order directed to the respondent and its officers, agents, successors, and assigns. The aforesaid order provides as follows:

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Sec-

tion 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Montgomery Ward & Company, Portland, Oregon, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Warehousemen's Union, Local No. 206, chartered by International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, as the exclusive representative of all merchandise checkers in the shipping department; all receiving clerks in the receiving department; all employees on the freight elevators; all sorters, completers, and packers, but not billers in the packing and billing department; all employees of the package-opening department except authenticators; all employees of the central-repair unit except those engaged in office work; all employees in the jewelry-repair unit engaged in handling merchandise, except watchmakers; all employees in the merchandise division except timekeepers and employees engaged in taking orders; all employees in the supply and multigraph department who fill in and stock supplies; all employees who handle merchandise in the operating auditing, stock-control, and catalog-service departments; all porters; and all employees at the warehouse, excluding supervisory employees;

(b) Refusing to bargain collectively with Retail Clerks' International Protective Association, Local No. 1257, as the exclusive representative of all retail clerks engaged in handling or selling merchandise, including display helpers, tire mounters, stock men, order fillers, markers, messengers, outside salesmen, and floor cashiers, exclusive of supervisory employees;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to those employees who went on strike on December 7, 1940, or thereafter, and who have applied for and have not been offered reinstatement, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, in the manner provided in the section entitled "The Remedy" above; and place those employees for whom

employment is not immediately available upon a preferential list in the manner set forth in said section, and thereafter, in said manner, offer them employment as it becomes available;

(b) Upon application offer to those employees who went on strike on December 7, 1940, or thereafter, and who have not previously applied for reinstatement, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, in the manner provided in the section entitled "The Remedy" above; and place those employees for whom employment is not immediately available upon a preferential list in the manner set forth in said section, and thereafter, in said manner offer them employment as it becomes available;

(c) Make whole the employees specified in paragraph 2 (a) above, for any loss of pay they may have suffered by reason of the respondent's refusal, if any, to reinstate them, by payment to each of them of a sum of money equal to that which he would normally have earned as wages, during the period from five (5) days after the date on which he applied for reinstatement to the date of the respondent's offer of reinstatement or placement upon a preferential list, less his net earnings, if any, during said period;

(d) Make whole the employees specified in paragraph 2 (b) above, for any loss of pay they may suffer by reason of the respondent's refusal, if any to reinstate them pursuant to paragraph 2 (b) above, by payment to each of them of a sum of money equal to that which he would normally have earned as wages, during the period from five (5) days after the date on which he applies for reinstatement to the date of the respondent's offer of reinstatement or placement upon a preferential list, less his net earnings, if any, during said period;

(e) Upon request, bargain collectively with Warehousemen's Union, Local No. 206, chartered by International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, as the exclusive representative of all merchandise checkers in the shipping department; all receiving clerks in the receiving department; all employees on the freight elevators; all sorters, completers, and packers, but not billers in the packing and billing department; all employees in the package-opening department except authenticators; all employees of the central-repair unit except those engaged in office work; all employees in the jewelry-repair unit engaged in handling merchandise, except watchmakers; all employees in the merchandise division except timekeepers and employees engaged in taking orders; all employees in the

supply and multigraph department who fill in and stock supplies; all employees who handle merchandise in the operating auditing, stock-control, and catalog-service departments; all porters; and all employees at the warehouse, excluding supervisory employees, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached on any such matters, upon request embody such understanding in a signed agreement;

(f) Upon request, bargain collectively with Retail Clerks' International Protective Association, Local No. 1257, as the exclusive representative of all retail clerks engaged in handling or selling merchandise, including display helpers, tire mounters, stock men, order fillers, markers, messengers, outside salesmen, and floor cashiers, exclusive of supervisory employees, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached on any such matters, upon request embody such understanding in a signed agreement;

(g) Post immediately in conspicuous places in its Portland, Oregon, plant, and maintain for a period of not less than sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent

will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), and (c) of this Order; and (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a), (b), (c), (d), (e) and (f) of this Order;

(h) Notify the Regional Director for the Nineteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

(3) On November 29, 1941, the Board's decision and order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Stuart S. Ball, Esquire, respondent's attorney in Evanston, Illinois.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript, and the order made thereupon set forth in paragraph (2) hereof, a decree enforcing in

whole said order of the Board and requiring respondent, and its officers, agents, successors, and assigns to comply therewith.

NATIONAL LABOR RELATIONS
BOARD,

By ERNEST A. GROSS,
Associate General Counsel.

Dated at Washington, D. C., this 31st day of March, 1942.

District of Columbia—ss.

Ernest A. Gross, being first duly sworn, states that he is Associate General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

ERNEST A. GROSS,
Associate General Counsel.

Subscribed and sworn to before me this 31st day of March 1942.

(Seal) DANIEL T. GHENT, Jr.,
Notary Public, District of Columbia.

My Commission expires August 31, 1944.

[Endorsed]: Filed Apr. 6, 1942. Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause.]

ANSWER TO PETITION FOR ENFORCE-
MENT AND RULE TO SHOW CAUSE.

Comes now Montgomery Ward & Co., Incorporated, the respondent herein, and files its answer to the petition for enforcement filed by the National Labor Relations Board as follows:

1. The respondent admits the allegations of paragraphs (1), (3), and (4) of the petition for enforcement.

2. The respondent admits that the Board stated its findings of fact, conclusions of law and issued an order directed to the respondent, as set out in paragraph (2) of the petition for enforcement, but denies that said findings of fact are supported by evidence and states further that said conclusions of law and said order are erroneous, unauthorized and insufficient in law, and should be reviewed and set aside.

Wherefore, having answered each and every allegation contained in the petition for enforcement, the respondent prays this Honorable Court that said petition for enforcement be denied.

Dated this eleventh (11th) day of April, 1942.

MONTGOMERY WARD & CO.,
INCORPORATED,
STUART S. BALL,
Secretary.

State of Illinois

County of Cook—ss.

Stuart S. Ball, being first duly sworn, deposes and says that he is Secretary of Montgomery Ward & Co., Incorporated, respondent before the National Labor Relations Board in the foregoing matter; that he has read the foregoing answer and knows the contents thereof and that the same is true; and that he subscribed said answer in his capacity as Secretary of Montgomery Ward & Co., Incorporated, being thereunto duly authorized.

STUART S. BALL.

Subscribed and sworn to before me this 11 day of April, 1942.

(Seal)

LORETTA G. HALLIHAN,

Notary Public,

Cook County, Ills.

My Commission Expires Dec. 27, 1944.

[Endorsed]: Filed Apr. 13, 1942. Paul P. O'Brien, Clerk.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10108

NATIONAL LABOR RELATIONS BOARD,
Petitioner and
Cross-Respondent,

vs.

MONTGOMERY WARD & CO., INCORPORATED,

Respondent and
Cross-Petitioner.

CROSS PETITION FOR REVIEW AND TO
SET ASIDE AN ORDER OF THE NA-
TIONAL LABOR RELATIONS BOARD.

Your cross-petitioner, Montgomery Ward & Co.,
Incorporated, respectfully represents:

1. That it is a corporation organized and existing under and by virtue of the laws of the State of Illinois, and that it is now, and at all times hereafter mentioned has been transacting business in the City of Portland, County of Multnomah, State of Oregon, all within the jurisdiction of the United States Circuit Court of Appeals for the Ninth Circuit.

2. That on or about March 31, 1941, the cross-respondent, National Labor Relations Board, issued, filed, and served it complaint against your cross-petitioner charging it with having engaged in and

engaging in unfair labor practices within the meaning of Section 8, Subdivisions 1 and 5, of the National Labor Relations Act, an Act of Congress approved July 5, 1935 (49 Stat. 449-497; 29 U. S. C. Sections 151-166), in the course of its business at Portland, Oregon.

3. That on or about November 29, 1941, the cross-respondent, National Labor Relations Board, made, filed, and served its Order on the cross-petitioner in said proceeding, which Order is the final Order of the National Labor Relations Board.

4. That cross-respondent's final Order is erroneous, unauthorized and insufficient in law, and should be reviewed and set aside because of each and all of the errors assigned in cross-petitioner's Statement of Points attached to and made a part of this Cross-Petition.

5. That your Cross-petitioner is aggrieved by Cross-respondent's final Order and brings this, its Cross-Petition for Review and to Set Aside an Order, pursuant to Section 10, Sub-division (f) of the National Labor Relations Act, an Act of Congress approved July 5, 1935 (49 Stat. 449-497 29 U. S. C. Sections 151-166).

6. Wherefore, your Cross-petitioner prays that this Honorable Court exercise its jurisdiction over the parties and subject matter of this Cross-petition and review the findings of fact, the conclusions of law and the final Order of Cross-respondent in this cause and enter a decree setting aside said Order, and that this Honorable Court make such other and

further orders and decrees as may be just and proper.

Dated this eleventh (11th) day of April, 1942.

MONTGOMERY WARD & CO.,
INCORPORATED,
STUART S. BALL,
Secretary.

State of Illinois,
County of Cook—ss.

Stuart S. Ball, being first duly sworn, deposes and says that he is Secretary of Montgomery Ward & Co., Incorporated, respondent before the National Labor Relations Board in the foregoing matter; that he has read the foregoing petition and knows the contents thereof and that the same is true; and that he subscribed said petition in his capacity as Secretary of Montgomery Ward & Co., Incorporated being thereunto duly authorized.

STUART S. BALL.

Subscribed and sworn to before me this 11 day of April, 1942.

(Seal)

LORETTA G. HALLIHAN,
Notary Public,
Cook County, Ills.

My Commission Expires Dec. 27, 1944.

United States of America
Before the National Labor Relations Board
Nineteenth Region.
Case No. XIX-C-847

In the Matter of MONTGOMERY WARD & COMPANY and WAREHOUSEMEN'S UNION, LOCAL No. 206, CHARTERED BY THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, Affiliated with the American Federation of Labor.

Case No. XIX-C-851

In the Matter of MONTGOMERY WARD & COMPANY and RETAIL CLERKS' INTERNATIONAL PROTECTIVE ASSOCIATION, LOCAL No. 1257, Affiliated with the American Federation of Labor.

TESTIMONY

New United States Court House
U. S. Circuit Court of Appeals Court Room
Portland, Oregon
April 14, 1941

The above-entitled matter came on for hearing at 10:00 a.m. pursuant to notice, as follows:

Before: George Bokar, Trial Examiner. [1*]

*Page numbering appearing at top of page of original Reporter's Transcript.

Appearances:

Patrick H. Walker, New United States Court House Building, Seattle, Washington, representing the Nineteenth Region.

Stewart S. Ball, 729 Central West Avenue, Evanston, Illinois, representing Montgomery Ward & Company, respondents.

James Landye, 1003 Corbett Building, Portland, Oregon, representing the charging unions. [2]

Proceedings

Trial Examiner Bokar: The hearing will please come to order. This is a formal hearing in the matter of Montgomery Ward & Company and Warehousemen Union, Local 206, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Affiliated with the A. F. of L., and Retail Clerks International Protective Association, Local Union No. 1257, affiliated with the A. F. of L., and known as causes, respectively, XIX-C-847 and XIX-C-851, before the National Labor Relations Board.

If counsel have not already stated their appearances for the record, they may do so now.

Mr. Ball: Stewart Ball, for the respondent, Montgomery Ward & Company.

Mr. Walker: Patrick H. Walker, for the Board.

Mr. Landye: James Landye, appearing for both the unions.

Mr. Ball: Let the record show that the respondent objects to an appearance in case No. XIX-C-847 and case No. XIX-C-851 by a representative or counsel for the charging unions, for the reason that the Board is fully represented by its own counsel; that this case involves charges against the respondent which, if true, are a violation of the law, and the respondent would be denied due process of law if its witnesses were subjected to double examination, by both counsel for the Board and counsel for the charging unions. [5]

Trial Examiner Bokat: Mr. Ball, I will have to overrule the objection for the reason that the rules and regulations make unions, parties to the proceedings, and, as parties, they have the right to be represented by counsel. The other part of your objection is rather premature. I don't know what part Mr. Landye will take in the proceedings, or whether he will cross examine any witnesses. I will defer ruling until we reach that,—that is, on that point.

I wish to inform all the parties that the official reporter makes the only official transcript of these proceedings. Citations in briefs or arguments based upon the record, directed to the Trial Examiner or to the Board, must cite the official transcript in all references to the record. The Board *will not* any transcript other than the official transcript for use in any court litigation.

It may become necessary to make corrections in the record during the hearing and, if so, the party desiring the correction will submit the suggested

correction to the other party or parties in writing. When this has received the written approval of the other parties, it will be submitted to the Trial Examiner. In the event the parties are unable to agree upon proposed corrections, the trial examiner will then consider motions to correct the record or may, upon his own motion, order certain corrections made in the transcript. If the parties have been unable to agree upon such corrections before the close of the [6] hearing, but have entered into a stipulation concerning such matters after the close of the hearing but prior to the receipt of the intermediate report, such stipulations or motions with respect to corrections in the transcript or record should be addressed to the Trial Examiner in care of the Chief Trial Examiner in Washington. After receipt of the intermediate report, all such communications should be directed to the Board itself, inasmuch as the Trial Examiner's connection with the case ceases upon the filing of his intermediate report with the regional director, at which time the Board transfers the case to itself.

This is a formal hearing and I request that you maintain the decorum that accompanies judicial proceedings.

Concise statements of reasons for motions or objections will be permitted. Arguments with respect to the same will not ordinarily appear in the official transcript. If counsel desire to argue objections, they will please so indicate to the Trial Examiner, who may, if he deems argument necessary, go "off

the record" for the purpose of hearing such argument.

It is to be understood that the official reporter takes everything that is said during the hearing by counsel, witnesses and the Trial Examiner, unless the Trial Examiner orders an off-the record discussion.

All requests from counsel to go off the record are to be directed to the Trial Examiner and not to the official reporter. [7]

The Trial Examiner will allow an automatic exception to all adverse rulings during the course of the hearing, and upon appropriate order an objection and exception will be permitted to stand to an entire line of questioning.

Five copies of all pleadings submitted during the hearing are to be filed with the Trial Examiner.

At the close of the hearing, the parties may, if they so desire, argue orally before the Trial Examiner.

Similarly, they may file briefs with the Trial Examiner within a time to be stated at the close of the hearing.

Such briefs shall be directed to the Trial Examiner, in care of the Chief Trial Examiner in Washington.

I make this announcement at this time in order that the parties may plan their case and time schedule accordingly. [8-9]

I want to add to that, that any party may file a brief with the Board, after it is ordered trans-

ferred to the Board, in the event that happens, pursuant to Section 32 of the rules.

I have not seen the pleadings in these cases, nor have I acquainted myself with the issues; so, in order to acquaint myself with the issues I will declare a recess of fifteen minutes, at which time I will study the pleadings. There will be a recess declared at this time.

(Whereupon a short recess was had in the hearing.)

Trial Examiner Bokar: The hearing will come to order, please. You may proceed whenever you are ready, Mr. Walker.

Mr. Walker: May it please the Examiner, I offer in evidence what has been marked as Board's Exhibit No. 1, being the formal file, which consists of the original charge filed in case No. XIX-C-851, as the original charge filed in case No. XIX-C-847, the order consolidating the cases, the original notice of hearing, the original consolidated complaint, affidavit of service of the same, answer of the respondent, and a copy of the rules and regulations, Series 2, as amended, effective March 13, 1940, published by the National Labor Relations Board. May I point out that the order designating the Trial Examiner has not yet been received, and I request that the same may be made a part of Board's Exhibit No. 1 when received.

Trial Examiner Bokar: I presume there is no objection to that, is there? [10]

Mr. Ball: No.

Trial Examiner Bokat: Is there any objection to the receipt of Board's Exhibit No. 1 in evidence?

Mr. Ball: Does the record show that an answer was filed in time, and proper service made by the parties?

Mr. Walker: I believe so.

Trial Examiner Bokat: The documents above referred to may be received in evidence and marked as Board's Exhibit No. 1.

(Whereupon the documents hereinabove referred to was received in evidence and marked as Board's Exhibit 1.)

Mr. Walker: With respect to the matter of proof of jurisdiction, Mr. Ball and I are planning to set that matter over for the present, contemplating that a written stipulation for the same may be prepared.

Trial Examiner Bokat: Is that satisfactory?

Mr. Ball: That is satisfactory.

Mr. Walker: Relative to the allegations in paragraph 6 of the complaint, I ask the Board to take judicial notice of its decision and direction of election in case R1863, together with the subsequent certification of representative issued by the Board on August 10, 1940, and received by the respondent August 13, 1940.

Trial Examiner Bokat: I will do so.

Mr. Walker: Mr. Reporter, if you will mark a copy of the decision and direction of election, and

a copy of the certifica- [11] tion of representative
in Case R1863 as Board's Exhibit No. 2?

(Whereupon the documents hereinabove re-
ferred to were marked as Board's Exhibit 2 for
Identification.)

Mr. Ball: Off the record?

Trial Examiner Bokat: Off the record.

(Discussion off the record.)

Mr. Walker: I now offer what has been marked
as Board's Exhibit No. 2 for Identification.

Trial Examiner Bokat: Is there any objection?

Mr. Ball: No objection.

Trial Examiner Bokat: There being no objec-
tion, it will be received and marked in evidence as
Board's Exhibit No. 2.

(Whereupon the documents heretofore
marked as Board's Exhibit 2 for Identification
were received in evidence.)

BOARD'S EXHIBIT 2

United States of America

Before the National Labor Relations Board

In the Matter of Montgomery Ward & Company
and Warehousemen's Union, Local No. 26, Af-
filiated with I. B. of T. C. S. & H. or A.,
A. F. of L.

Case No. R-1863.—Decided June 24, 1940

General Merchandising Mail Order Business—
Investigation of Representatives: controversy con-

cerning representation of employees: refusal of Company to recognize Union until certified by Board—Unit Appropriate for Collective Bargaining; all employees engaged in warehouse work excluding supervisory employees. Election Ordered.

Mr. F. D. Roth, of Oakland, Calif., and Mr. John A. Barr, of Chicago, Ill., for the Company.

Green, Bosen & Landye, by Mr. James Landye, of Portland, Oreg., for the Union.

Miss Ann Landy, of counsel to the Board.

DECISION AND DIRECTION OF ELECTION

Statement of the Case

On April 5, 1940, Warehousemen's Union, Local No. 26, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America,¹ herein called the Union, filed with the Regional Director for the Nineteenth Region (Seattle, Washington) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Montgomery Ward & Company, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

¹Referred to in the order directing investigation as Warehousemen's Union, Local No. 26, affiliated with I. B. of T. C. S. & H. of A., A. F. of L.

On April 27, 1940, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 2, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice. On May 6, 1940, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and the Union. On May 9, 1940, the Regional Director issued a notice of postponement of hearing, copies of which were served upon the same parties. Pursuant to the notice of hearing and notice of postponement, a hearing was held on May 27 and 28, 1940, at Portland, Oregon, before Thomas B. Graham, the Trial Examiner duly designated by the Board. The Company and the Union were represented by counsel, participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. During the course of the hearing the Trial Examiner made several ruling on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. The Business of the Company

Montgomery Ward & Company, an Illinois corporation having its principal executive offices in Chicago, Illinois, is engaged in the distribution of merchandise through the media of mail order houses and retail stores. The Company owns, operates, and maintains 9 mail order houses, 5 mail order warehouses, 260 order offices, and 625 retail stores throughout the United States. About 20,000,000 customers throughout the United States and in many foreign countries are served by the Company. The Company's net sales for 1939 amounted to \$474,882,032.

This proceeding is concerned solely with employees of the Company in Portland, Oregon, where the Company operates a mail order house, a retail store, and a separate warehouse. Approximately 90 per cent of the merchandise distributed by the mail order house and the store is shipped to Portland from points outside the State of Oregon. About 60 per cent of the customers of the mail order house live outside the State of Oregon.

Although located in the same building, the mail order house and the retail store are operated as separate units. On May 23, 1940, the mail order house employed over 1200 workers, the retail store 175, and the warehouse 27. The Company denies that the Board had jurisdiction over employees of the retail store.

II. The Organization Involved

Warehousemen's Union, Local No. 26, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company engaged in warehouse work.

III. The Question Concerning Representation

Shortly before the hearing the Union requested recognition as bargaining representative for the employees in the warehouse. The Company took the position that it could not recognize the Union as bargaining agent until the question of proper collective bargaining unit was determined by the Board. At the hearing the Company and the Union took conflicting positions regarding the appropriate unit. We find that a question has arisen concerning the representation of employees of the Company.

IV. The Effect of the Question Concerning Representation Upon Commerce

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Appropriate Unit

In its petition the Union alleged that employees at the Company's warehouse engaged in warehouse work constitute an appropriate unit. The Union defines as warehouse workers employees who handle merchandise. At the hearing the Union amended its petition and alleged that all warehouse workers at the mail order house as well as the warehouse should be included in the unit.

The Company requests a unit comprising all the employees of the mail order house and the warehouse, excluding only five persons engaged, at the warehouse, in receiving and handling merchandise consigned to the retail store. Neither the Union nor the Company desire the inclusion of employees at the store itself.

V. H. Brooks, superintendent of operations at the mail order house, testified at the hearing regarding whether or not the employees in various departments and work classifications handle merchandise. Counsel for the Union, on the basis of this testimony, summarized as follows the classifications claimed by the Union as falling within the appropriate unit: all merchandise checkers in the shipping department; all receiving clerks in the receiving department; all employees on the freight elevators; all sorters, completers, and packers, but not billers, in the packing and billing department; all employees of the package opening department, except authenticators; all employees of the central repair unit,

except those engaged in office work; all employees in the jewelry repair unit engaged in handling merchandise, except watchmakers; all employees in the merchandise division, except timekeepers and employees engaged in taking orders; all employees in the supply and multigraph department who fill in and stock supplies; all employees who handle merchandise in the operating auditing, stock control, and catalog service departments; all porters; and all employees at the warehouse.

The employees at the mail order house whom the Union would exclude from the unit consist primarily of clerical workers who are ineligible for membership in the Union but are eligible for membership in the Office Employees Union, a labor organization, which, like the Union, is affiliated with the American Federation of Labor. The Office Employees Union is engaged in organizing them.

The Company claims that the close functional coherence and mutual interdependence of the operations of the mail order house necessitates that all its employees be included in the same unit. In support of this claim, V. H. Brooks testified generally that employees who handle merchandise are frequently transferred to positions involving clerical work, and vice versa, but offered no specific evidence as to the number of employees affected by such transfers. The Company also offered testimony to the effect that its mail order house employees in other cities have been organized in plant-wide units.

The Company has not entered into collective bargaining agreement with any labor organization in its mail order houses.

Under the circumstances of this case we find the unit requested by the Union to be appropriate. Organization of the employees has proceeded upon the basis of warehouse workers' unit, and the Union is the only labor organization existing among the employees involved.

The Company further contends that five warehouse employees who are on the retail store's separate pay roll should be excluded from the unit on the ground that the Board has no jurisdiction over the store. It is not contended that the work of these five employees differs from that of the other warehouse employees in any way except that they handle goods consigned to the store rather than to the mail order house. In another proceeding the Board had assumed jurisdiction over the employees of the store² and there appears to be no other reason for excluding these five employees from the unit. We shall include them. In accordance with our usual custom we shall exclude supervisory employees from the unit.

We accordingly find that the following employees of the Company employed at its Portland mail order house and warehouse constitute a unit appropriate

²In the Matter of Montgomery Ward & Company and Reuben Litzenberger et al., 9 N. L. R. B. 538, enf'd *Montgomery Ward & Company v. National Labor Relations Board*, 107 F. (2d) 555 (C. C. A. 7).

for the purposes of collective bargaining: all merchandise checkers in the shipping department; all receiving clerks in the receiving department; all employees on the freight elevators; all sorters, completers, and packers, but not billers, in the packing and billing department; all employees of the package opening department, except authenticators; all employees of the central repair unit, except those engaged in office work; all employees in the jewelry repair unit engaged in handling merchandise, except watchmakers; all employees in the merchandise division, except timekeepers and employees engaged in taking orders; all employees in the supply and multigraph department who fill in and stock supplies; all employees who handle merchandise in the operating auditing, stock control, and catalog service departments; all porters; and all employees at the warehouse, excluding supervisory employees.

VI. The Determination of Representatives

At the hearing the Union and the Company stipulated that a number of the employees of the Company in the unit claimed by the Union have signed application cards for membership in the Union. We find that the question concerning representation which has arisen can best be resolved by an election by secret ballot. The employees of the Company within the appropriate unit who were employed by the Company during the pay-roll period immediately preceding the date of our Direction of Election herein, including those employees who did not work during such pay-roll period because they were ill

or on vacation and employees who were then or have since been temporarily laid off, but excluding those who have since quit or been discharged for cause, shall be eligible to vote.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Montgomery Ward & Company, Portland, Oregon, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All merchandise checkers in the shipping department; all receiving clerks in the receiving department; all employees on the freight elevators, all sorters, completers, and packers, but not billers, in the packing and billing department; all employees of the package opening department, except authenticators; all employees of the central repair unit, except those engaged in office work; all employees in the jewelry repair unit engaged in handling merchandise, except watchmakers; all employees in the merchandise division, except timekeepers and employees engaged in taking orders; all employees in the supply and multigraph department who fill in and stock supplies; all employees who handle merchandise in the operating auditing, stock control, and catalog service departments; all porters; and all employees at the warehouse; excluding super-

visory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

Direction of Election

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

Directed that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with Montgomery Ward & Company, Portland, Oregon, an election by secret ballot shall be conducted as early as possible but not later than thirty (30) days from the date of this Direction of Election under the direction and supervision of the Regional Director for the Nineteenth Region, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations, among all merchandise checkers in the shipping department; all receiving clerks in the receiving department; all employees on the freight elevators; all sorters, completers, and packers, but not billers, in the packing and billing department; all employees of the package opening department, except authenticators; all employees of the central repair unit, except those engaged in office work; all employees in the jewelry repair

unit engaged in handling merchandise, except watch-makers; all employees in the merchandise division, except timekeepers and employees engaged in taking orders; all employees in the supply and multigraph department who fill in and stock supplies; all employees who handle merchandise in the operating auditing, stock control, and catalog service departments; all porters; and all employees at the warehouse; who were employed by the Company at its Portland, Oregon, mail order house and warehouse during the pay-roll period immediately preceding the date of this Direction of Election, including those employees who did not work during such pay-roll period because they were ill or on vacation, and employees who were then or have since been temporarily laid off, but excluding supervisory employees and employees who have since quit or been discharged for cause, to determine whether or not said employees desire to be represented by Warehousemen's Union, Local No. 26, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, affiliated with the American Federation of Labor, for the purposes of collective bargaining.

Mr. Edwin S. Smith took no part in the consideration of the above Decision and Direction of Election.

United States of America
Before the National Labor Relations Board
Case No. R-1863

In the Matter of MONTGOMERY WARD & COMPANY and WAREHOUSEMEN'S UNION, LOCAL No. 206 affiliated with I. B. of T. C. S. & H. of A., A. F. of L.

CERTIFICATION OF REPRESENTATIVES

On June 24, 1940, the National Labor Relations Board, herein called the Board, issued its Decision and Direction of Election in the above entitled proceeding. ¹Pursuant to the Direction an election by secret ballot was conducted on July 19, 1940, under the direction and supervision of the Regional Director for the Nineteenth Region (Seattle, Washington). On July 22, 1940, the Regional Director, acting pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, issued and duly served upon the parties an Election Report. No objections to the conduct of the ballot or to the Election Report were filed by any of the parties.

As to the balloting and its results, the Regional Director reported as follows:

(1) 24 N. L. R. B., No. 100.

Total on eligibility list.....	470
Total ballots cast.....	380
Total votes in favor of Warehousemen's Local 206	328
Total votes against Warehousemen's Local 206	50
Total challenged votes.....	2
Total on eligibility list not voting.....	90

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended,

It Is Hereby Certified that Warehousemen's Union, Local No. 206, affiliated with International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, affiliated with the American Federation of Labor, has been designated and selected by a majority of all merchandise checkers in the shipping department; receiving clerks in the receiving department; employees on the freight elevators, all sorters, completers, and packers, but not billers, in the packing and billing departments; employees of the package-opening department, except authenticators; employees of the central repair unit, except those engaged in office work; employees in the jewelry repair unit engaged in handling merchandise, except watchmakers; employees in the merchandise division, except timekeepers and em-

ployees engaged in taking orders; employees in the supply and multigraph department who fill in and stock supplies; employees who handle merchandise in the operating, auditing, stock control, and catalog service departments; porters; and employees at the warehouse; of Montgomery Ward & Company at its Portland, Oregon, mail order house and warehouse, excluding supervisory employees, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, Warehousemen's Union, Local No. 206, affiliated with International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, affiliated with the American Federation of Labor, is the exclusive representative of all such employees, for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

Signed at Washington, D. C., this 9th day of August, 1940.

J. WARREN MADDEN,

Chairman,

EDWIN S. SMITH,

Member,

WM. M. LEISERSON,

Member,

(Seal)

NATIONAL LABOR

RELATIONS BOARD.

Mr. Walker: I will call Mr. Estabrook.

J. W. ESTABROOK

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Bokat: Give your full name and address to the reporter.

The Witness: J. W. Estabrook, 500 Labor Temple, Portland, Oregon.

Q. (By Mr. Walker) Where do you reside?

[12]

Trial Examiner Bokat: We have his address.

Q. (Mr. Walker continuing) What is your occupation?

A. Financial Secretary of Warehousemen's Local No. 206.

Q. With what organization is Local 206 affiliated?

A. The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with the A. F. of L.

Q. Chartered by the International Brotherhood of Teamsters? A. Yes.

Q. How long have you held the position that you now occupy? A. About seven years.

Q. What are your duties in that regard?

A. My duties are organizing people that rightfully come under our jurisdiction. I am the chief executive officer of the union. My duties are to discharge all the work that comes before our organization from time to time, or in straightening out any matters that pertain to the union.

(Testimony of J. W. Estabrook.)

Q. Is Local 206, the organization in which you now hold office, the same organization that was certified under the document which has been received in evidence as Board's Exhibit 2? A. Yes.

Q. Subsequent to August 10, 1940, or at any time, have you met Mr. Barr?

Mr. Ball: Just a minute. I move that the witness be instructed to answer the question Yes or No. It calls for a Yes [13] or No answer.

The Witness: What is the question?

Trial Examiner Bokar: Will you read the question back, Mr. Reporter?

(Whereupon the question referred to was read aloud by the reporter as above recorded.)

A. I have, yes.

Q. (By Mr. Walker) Where did you meet him?

A. In this building, the first time.

Trial Examiner Bokar: What do you mean by this building?

A. In the New United States Court House Building.

Q. (Mr. Walker continuing) About when was that, Mr. Estabrook?

A. I couldn't give you the correct date; I don't know what date it was during the time of the first meeting.

Trial Examiner Bokar: Will the parties stipulate when that was, if they know?

The Witness: It was at the time of the first hearing.

(Testimony of J. W. Estabrook.)

Trial Examiner Bokat: Can the parties stipulate when that hearing took place?

Mr. Walker: About May, 1940.

Trial Examiner Bokat: Well, the decision would probably indicate the date.

Mr. Walker: It was sometime in May, 1940, I am pretty sure.

Trial Examiner Bokat: Who was Mr. Barr?

The Witness: The gentleman right there (pointing). [14]

Trial Examiner Bokat: I don't mean that. Do you know what his title was, or what his connection was with the respondent?

Mr. Ball: It is understood that Mr. Barr at that time, at the time Mr. Estabrook met him, or at the time referred to, was acting as counsel for Montgomery Ward & Company in the course of a representation hearing had here.

Trial Examiner Bokat: All right.

Q. (Mr. Walker continuing) After that, did you have occasion to meet him again?

A. Yes.

Q. Where was the next time?

A. Washington, D. C.

Q. About when was that?

A. That was in September; the early part of September.

Q. 1940? A. Yes.

Q. Did you have a conversation with him at that time? A. I did.

(Testimony of J. W. Estabrook.)

Q. And what was the conversation?

A. I asked Mr. Barr if I could have an appointment with him when I got to Chicago.

Q. Did he reply? A. Yes.

Q. What did he say? A. He said I could.

[15]

Q. Was there anything else said about a conversation at that time, or anything further in that particular conversation?

A. No; we were out at a ball game; we discussed the baseball game.

Q. Did you obtain an appointment with him after that?

A. Yes, I called up Mr. Barr long distance from New York and obtained an appointment.

Q. From New York, did you go to Chicago?

A. I did.

Q. Did you meet Mr. Barr in Chicago?

A. Yes.

Q. Did you meet anybody else there?

A. I met Mr. Barr, Mr. Ball, and Mr. Heidinger.

Trial Examiner Bokar: Will you spell that last name?

The Witness: I don't know.

Mr. Ball: H-e-i-d-i-n-g-e-r (spelling).

Trial Examiner Bokar: Thank you.

Q. (Mr. Walker continuing) Where was that meeting? A. In their office.

Q. About when was it?

A. It was in the latter part of September.

(Testimony of J. W. Estabrook.)

Mr. Ball: Let the record show it was on September 23.

Trial Examiner Bokat: Is that agreed?

Mr. Walker: That is agreeable.

Trial Examiner Bokat: All right. [16]

Q. (Mr. Walker continuing) Did you have a conversation with any or all the persons you have mentioned?

A. My first conversation was with Mr. Barr.

Q. What was said?

A. We discussed the agreement,—the proposed agreement,—that I had presented to Mr. Barr.

Mr. Ball: Just a minute. I will object to the answer as being a general statement and not a statement of what was said.

Trial Examiner Bokat: Yes, I will sustain the objection. When did you present this agreement? After this meeting?

The Witness: Yes, I did.

Trial Examiner Bokat: What was said?

The Witness: Well, I am sure I could not remember what was said word for word.

Trial Examiner Bokat: Of course not. I don't mean that. Tell us substantially what it was?

The Witness: The discussion amounted to this, that Mr. Barr informed me that I was to negotiate a contract with Mr. Powell and Mr. Huddleston.

Trial Examiner Bokat: And who are Mr. Powell and Mr. Huddleston?

(Testimony of J. W. Estabrook.)

The Witness: Mr. Powell,—I don't know as I can tell exactly what he is, other than that he is in charge of the labor relations on the Coast.

Trial Examiner Bokat: And who is Mr. Barr? Just a moment, [17] I think that is already in the record. Who is Mr. Huddleston?

Mr. Ball: Do you mean for him to stand up?

Trial Examiner Bokat: No. What is his official position with the company?

Mr. Ball: Mr. Estabrook has described Mr. Powell's position correctly; he was the representative in charge of those matters.

Trial *Examination* Bokat: And who was Mr. Huddleston?

The Witness: He is the manager of the store here.

Mr. Ball: Just a moment. Let us have that correctly. Let the record show that he is the manager of the mail order house.

The Witness: Oh.

Mr. Walker: Will you mark this, Mr. Reporter?

(Whereupon the document hereinabove referred to was marked as Board's Exhibit 3 for Identification.)

Q. (Mr. Walker continuing) Mr. Estabrook, I hand you what has been marked as Board's Exhibit 3 for Identification and ask you what that is?

A. That is our proposed wage scale and working agreement.

(Testimony of J. W. Estabrook.)

Trial Examiner Bokat: Is that the one you presented at this meeting?

The Witness: Yes.

Mr. Walker: I offer in evidence what has been marked as Board's Exhibit 3 for Identification.

Trial Examiner Bokat: Is there any objection?

Mr. Ball: No objection. [18]

Trial Examiner Bokat: It will be received and marked in evidence as Board's Exhibit 3.

(Whereupon the document heretofore marked as Board's Exhibit 3 for Identification was received in evidence.)

BOARD EXHIBIT No. 3

AGREEMENT

This agreement made and entered into this day of1940, by and between Montgomery Ward & Company, hereinafter called the Employer, and the Warehousemen's Union Local #206, I. B. of T. C. W. & H. of America, A. F. of L., hereinafter called the Union.

Article 1. The employer agrees to recognize the Union as sole collective bargaining agency for the employes performing work in the classifications listed below in Article 4 of this agreement. No superintendent having authority from the Employer to hire or discharge men or women shall be a member of this Union.

Article 2. The Employer agrees to give preference of employment to unemployed members of the

(Testimony of J. W. Estabrook.)

Union and in the event the Union is unable to furnish satisfactory help upon the request of the Employer, he (the Employer) may employ a non-member of the Union provided such person makes application for membership in the Union within seven (7) days after taking employment.

Article 3. Section 1. Eight (8) hours within nine (9) consecutive hours shall constitute a day's work. Forty (40) hours consisting of eight (8) hours, Monday to Friday inclusive, shall constitute a week's work.

Sec. 2. Straight time shall be any eight (8) consecutive hours from 8:00 a.m. to 6:00 p.m. Monday to Friday inclusive. All other time shall be at the overtime rate as established in Article 5 of this Agreement.

Sec. 3. Any work performed on any of the following named holidays shall be at the overtime rate of time and one-half as established in Article 5 of this agreement:—Saturdays, Sundays, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Armistice Day, Thanksgiving Day, and Christmas Day.

Article 4. The following shall be the minimum wages paid in their respective classifications:

STOCK ROOM

Stockman	\$35.00	per	week
Assistant Stockman	32.50	"	"
Stock Helper, male.....	30.00	"	"
Stock Order Filler, packer & checker.....	30.00	"	"
Warehousemen	33.50	"	"

(Testimony of J. W. Estabrook.)

SCHEDULE ACTIVITY

Heavy Pit Order Filler.....	32.50	“	“
House Sale Order Filler “C” line.....	30.00	“	“
House Sale Order filler “A” & “B” line.....	28.50	“	“
Order filler, checker, wrapper, women.....	25.00	“	“
Packer, men	28.50	“	“
Packer, women	25.00	“	“
Correction Clerks, men.....	32.50	“	“
Correction Clerks, women.....	27.50	“	“
Production Control Clerk.....	30.00	“	“
Outline Clerk	25.00	“	“
Mailable Pit Order Filler & Part lot packer	30.00	“	“

EXAMINATION

Examiner “C” line.....	35.00	“	“
Assistant Examiner “e” line.....	32.50	“	“
Examiner “A” & “B” line.....	27.50	“	“
Stock preparation, women.....	25.00	“	“
Stock preparation, men.....	28.50	“	“

PACKING & BILLING

Sorter	22.50	“	“
Completer	27.50	“	“
Packers, men	30.00	“	“
Packers, women	27.50	“	“
Scalers, Multiple	22.50	“	“
Scalers, Single	25.00	“	“
Scalers, Pit	27.50	“	“
Billers, Multiple	26.00	“	“
Billers, Single	25.00	“	“
Billers, C. O. D.....	27.50	“	“
Error Correction Clerk.....	27.50	“	“
Diverted Order Clerk.....	27.50	“	“
Belt Inspector	22.50	“	“
Refund Control Clerk.....	25.00	“	“
Large Refund Control Clerk.....	25.00	“	“

(Testimony of J. W. Estabrook.)

PREFERRED ATTENTION ORDER UNITS

Completer	28.50	"	"
Packer	30.00	"	"
Biller	28.00	"	"
Preferred Attention Scaler.....	27.50	"	"

SHIPPING & RECEIVING FLOOR

Shipping & Receiving Clerks.....	35.00	"	"
Checker	37.50	"	"
Elevator Opr. & Car unloading.....	32.50	"	"
Car Loaders	37.50	"	"

PACKAGE OPENING UNIT

Sign-up clerks, women.....	27.50	"	"
Sign-up clerks, men.....	32.50	"	"
Stock preparation girls.....	25.00	"	"

RETAIL CITY DELIVERY

Shipping clerks	35.00	"	"
Receiving clerks	35.00	"	"
Checker	35.00	"	"

BELT ROOM CUTTING UNIT

Stockman	35.00	"	"
Assistant stockman	32.50	"	"
Pipe shop order filler & stockman.....	35.00	"	"
Porters	27.50	"	"
Technical Shade Cutter.....	35.00	"	"
Technical Asst. Shade Cutter.....	32.50	"	"
Linoleum Cutter	35.00	"	"
Crater	30.00	"	"
Tailoresses	26.50	"	"
Head Tailoress	28.50	"	"

Any wages now being paid above the minimum provided for herein shall not be reduced for any cause. Adjustment of disputes or differences on

(Testimony of J. W. Estabrook.)

classifications will be settled through the Board of Adjustment provided for in Article 13 of this agreement.

Article 5. The overtime rate of pay shall be time and one-half ($1\frac{1}{2}$). No trading of overtime for time off.

Article 6. In the event that the Employer does not at present employ a working foreman, forelady, supervisor, or instructor, it is agreed that if one is employed, he or she shall receive fifty (.50) cents a day above the rate of pay for the highest classification herein contained.

Article 7. If employes are worked over five (5) consecutive hours without a meal period, all time in excess of five (5) hours without such meal period shall be at the overtime rate. Meal periods shall be so arranged as not to interfere with the normal operation of the business.

Article 8. Section 1. There shall be no discrimination against any employes for Union activity or membership.

Sec. 2. The Employer shall have the right to discharge any employes for insubordination, drunkenness, incompetence or failure to perform work as required or to observe safety rules and regulations and the Employer's house rules, which shall be conspicuously posted. In the event any employee feels he or she has been discriminated against or unjustly discharged, he or she shall have a right to review his or her case by the Board of Adjustment, as set

(Testimony of J. W. Estabrook.)

forth in Article 13 of this agreement. In the event the Board of Adjustment finds the discharge to have been unjustifiable, said Board shall order reinstatement of such employee with full payment for lost time.

Sec. 3. Where the employer requests an additional medical examination of an employee, and there is a doubt in the mind of the employee as to the proper diagnosis of his or her case, the Union shall request a further examination by an impartial examiner, (to be paid by the Union). In the event both medical examiners do not agree in their findings it is further agreed that a third examiner shall be called for a final decision; said expense to be equally divided between the Employer and the Union, and the employee either returned to work with back pay or dismissed. New employees must have physical examination within thirty (30) days.

Article 9. Lay-offs: If the work becomes slack and the Employer deems it advisable to reduce forces, employees who have been employed less than six (6) months shall be laid off first. If after all the men or women who have been employed less than six (6) months have been laid off, the Employer considers it advisable to take further measures, further lay-offs shall be in accordance with the seniority of the various employees on each floor.

In rehiring, those employees laid off last will be rehired first, and no new employees will be hired until the list of former employees is exhausted.

(Testimony of J. W. Estabrook.)

Seniority at Montgomery Ward & Company's main store in Portland will be as follows: Employees now employed will have preference over employees transferred from other warehouses regardless of length of time employees at other warehouses might have with the Company. Any employees transferred from other warehouses to the main store must draw the scale provided in this agreement for extra employees. In case of lay-offs employees coming in from other warehouses will be the first to be laid off.

Article 10. Employers shall adhere to their past practice of granting vacations but in no case shall a vacation be less than one week with full pay each year.

Article 11. Strikes: The Union agrees not to engage in any strikes or stoppage of work. The Employer agrees not to engage in any lockout. Any action of the employees leaving jobs for their own protection in cases of a legally declared strike by some Union directly working on the job, if said strike is sanctioned and approved by the Portland Central Labor Council, shall not constitute a violation of this clause of this agreement.

Article 12. Any person receiving wages or conditions or periods of vacation in excess of the minimums set forth herein shall not have any such benefits taken away from them, because of the signing of this agreement. All holidays, when not worked, shall be paid for as an eight hour day.

(Testimony of J. W. Estabrook.)

When holidays are worked, the rate of pay shall be time and one-half ($1\frac{1}{2}$).

Article 13. A Board of Adjustment is hereby created to be composed of two (2) representatives of each contracting party. Said Board shall organize at once and shall elect a Chairman and Secretary and shall have the power to adjust any differences that may arise between the parties hereto regarding the meaning or enforcement of this agreement. Said Board shall meet for consideration of all matters that may be referred to it within forty-eight (48) hours subsequent to receipt by its Secretary by notice of same. The Board decision shall be signed by a majority of the Board. If the Board cannot agree on any question referred to it within forty-eight hours, they shall then choose a fifth member who shall have no connection with either contracting party and the decision of a majority of the Board of five shall be final and binding on both parties. Pending the decision of any question referred to the Board, work shall be continued in accordance with the provisions of this contract.

Article 14. This agreement shall go into effect the day of.....1940, and remain in effect until the.....day of.....194 , and thereafter subject to thirty (30) days' notice of a desire to change by either party. If notice to desire to change or modify this agreement is served as hereinabove provided, negotiations shall

(Testimony of J. W. Estabrook.)

start twenty (20) days from the date such notice is received.

In Witness Whereof, the parties hereto have caused these presents to be executed the day and year first hereinabove written.

MONTGOMERY WARD &
COMPANY

.....

.....

WAREHOUSEMEN'S UNION
LOCAL #206

.....

.....

Mr. Ball: May I, in connection with the offer, ask one question of the witness?

Trial Examiner Bokat: Before it is received?

Mr. Ball: Yes.

Trial Examiner Bokat: On voir dire, is that what you had in mind?

Mr. Ball: Yes.

Trial Examiner Bokat: Go ahead. Let's see what it is.

Mr. Ball: You did not give a copy of this contract at that time to Mr. Barr, did you?

The Witness: I certainly did.

Mr. Ball: All right.

Trial Examiner Bokat: May I interrupt before you proceed, Mr. Walker?

(Testimony of J. W. Estabrook.)

Mr. Walker: Certainly.

Trial Examiner Bokat: Is it your testimony, Mr. Estabrook, that at this meeting which you have described as being in Chicago, you were informed that Mr. Powell and Mr. Huddleston were to be the company's representatives to meet with you with regard to further bargaining? [19]

The Witness: That is correct.

Trial Examiner Bokat: All right. Proceed.

Q. (Mr. Walker continuing) After delivering a copy of Board's Exhibit No. 3 to Mr. Powell,—I mean, to Mr. Ball, Mr. Barr, and Mr. Heidinger, was anything done with respect to the agreement?

A. No, not there.

Q. Was it discussed?

A. We discussed it, yes.

Q. What was the discussion?

A. Well, the discussion was that,——

Mr. Ball: I will object to that, unless the question is made more definite, as to whether or not **this** discussion took place between Mr. Barr and Mr. Estabrook, or between Mr. Estabrook and the three gentlemen named; that is, whether they were all together, or individually, or just what the circumstances were.

Trial Examiner Bokat: I think that is a fair request. Will you clarify that, Mr. Walker?

Mr. Walker: Yes.

Q. (Mr. Walker continuing) At which time was

(Testimony of J. W. Estabrook.)

there a discussion relative to the copy of the agreement, the meeting with Mr. Barr alone, or the meeting with Mr. Barr, Mr. Ball, and Mr. Heidinger?

A. All three of the gentlemen made the same statement; probably [20] not in the same words.

Q. Which ones made which statements, and when?

Trial Examiner Bokatz: You mean that the same remarks were made by all of them?

The Witness: No.

Trial Examiner Bokatz: At the same time, while they were together?

The Witness: No. I first discussed it with Mr. Barr in his office. Mr. Barr took me into the office of Mr. Heidinger and introduced me to Mr. Heidinger, and we had a discussion there, and then Mr. Barr took me to Mr. Ball's office, and we had another discussion there.

Trial Examiner Bokatz: I think that is quite clear. What happened?

The Witness: I was told that Mr. Powell and Mr. Huddleston were the two men that we were to have negotiations with. They also stated that there might be one or two points that Mr. Huddleston and Mr. Powell would not be able to discuss with me, which they would have to take up with the company at the Chicago office.

Trial Examiner Bokatz: Did they mention what those points were?

(Testimony of J. W. Estabrook.)

The Witness: No, they did not.

Trial Examiner Bokar: All right.

Q. (Mr. Walker continuing) What else took place at that meet- [21] ing with these three gentlemen? A. That was about all.

Q. Was there any discussion relative to Mr. Powell and Mr. Huddleston, other than what you have already related?

A. Not that I can remember.

Q. Do you recall whether or not there was any discussion relative to the bonus plan?

A. No; not that I can recollect.

Q. Do you know what has ultimately become of the bonus plan since that meeting in Chicago that you have related?

Mr. Ball: I will object to that as wholly irrelevant to any issue in this case.

Trial Examiner Bokar: I take it that it is subject to connection. I am at a loss to know.

Mr. Walker: Then I will withdraw the question.

Trial Examiner Bokar: All right.

Q. (Mr. Walker continuing) Was the agreement that was delivered to the three representatives of Montgomery Ward Company examined by them at the time of the meeting you have described?

A. I didn't deliver an agreement to all three of them.

Q. Who did you deliver the agreement to?

A. Mr. Barr was the man I gave the agreement to.

(Testimony of J. W. Estabrook.)

Q. Did Mr. Barr discuss any of the particular clauses of the agreement? [22]

A. No, he did not.

Q. Did he refer to any of the clauses of the agreement?

A. The only reference that he made,—and, of course, I don't know what clauses he meant,—it was that Mr. Powell and Mr. Huddleston would be able to conduct negotiations or discussions on most of the points that would come up in the agreement. However, there was one or two points that was against company policy, and that would have to be a matter referred to the Chicago office. And at that time,—I don't remember which of the three gentlemen told me this,—but he said that there wouldn't be any stalling, or anything like that; that if we got stuck on a point, Powell and Huddleston could contact the Chicago office, and Chicago would say, or, rather, would see that they would get the information that they needed. They also stated that they had no reason to hold up the negotiations in any way.

Q. Was there any discussion relative to what phase of the company policy was involved at that time?

A. I think there was a discussion on closed shop.

Q. What was that?

Mr. Ball: I don't want to enter an objection constantly, but I would like to have these questions

(Testimony of J. W. Estabrook.)

clear. I would like to know who said it, with whom the discussions were, and when.

Trial Examiner Bokat: I think you are right about that, Mr. Ball. [23]

Mr. Ball: It will improve the problem a great deal, and simplify cross examination.

The Witness: Well, I can only get it down to two men; it was either Mr. Barr or Mr. Heidinger.

Q. (Mr. Walker continuing) Who made the last statement? A. That is right.

Trial Examiner Bokat: And what was that, again?

The Witness: One of the two gentlemen made that statement.

Trial Examiner Bokat: Either one of the two gentlemen?

The Witness: Yes; either one or the other made the statement that it was against the company policy to have a closed shop, that they had never had one.

Trial Examiner Bokat: I assume that there was a clause in the agreement calling for closed shop?

The Witness: Yes.

Trial Examiner Bokat: Did either of these men examine the agreement before they discussed it with you?

The Witness: I never saw them do so.

Trial Examiner Bokat: I assume they had an opportunity to look at it?

(Testimony of J. W. Estabrook.)

The Witness: Yes, but the meeting in Chicago was to find out who we were going to do negotiating with. Up until that time I didn't know.

Q. (Mr. Walker continuing) Did you meet with any other officials of Montgomery Ward & Company in Chicago? [24] A. No, sir.

Q. Following that, what did you do?

A. I returned to Portland.

Q. After returning to Portland, did you have any further contact with any representative of Montgomery Ward & Company?

A. Yes, my contacts from then on were with Mr. Powell or Mr. Huddleston.

Q. When did you first contact Mr. Powell or Mr. Huddleston?

A. I couldn't give you the exact date; it was sometime in October.

Q. How did you first contact them?

A. By telephone.

Q. How did you place the call? Who did you place the call to? A. Mr. Huddleston.

Q. And did you contact him? A. Yes.

Q. Did you have any discussion with him at that time? A. Yes.

Q. What was it?

A. Concerning the agreement.

Q. What was said? Is this the telephone conversation now, that you are talking about?

A. Oh, no.

(Testimony of J. W. Estabrook.)

Trial Examiner Bokat: As a result of the telephone conversation you had a meeting with him?

[25]

The Witness: Yes.

Trial Examiner Bokat: That was in the same month, in October, 1940?

The Witness: Yes.

Q. (Mr. Walker continuing) Where did you meet with Mr. Huddleston?

A. In his office.

Q. Who was with him?

A. Mr. Barth and Mr. Powell.

Trial Examiner Bokat: Now, who is Mr. Barth, if you know?

The Witness: The gentleman in the gray suit (pointing).

Trial Examiner Bokat: What is his position?

The Witness: I think he is the manager of the retail store in Portland.

Trial Examiner Bokat: What is Mr. Barth's designation, Mr. Ball?

Mr. Ball: Mr. Barth is the manager of the retail store in Portland, Oregon.

Trial Examiner Bokat: All right.

Q. (Mr. Walker continuing) Prior to the time you met with Mr. Huddleston and Mr. Powell, had you met with Mr. Huddleston alone?

A. Not that I recall.

Q. Now, will you state whether or not a copy of Board's Exhibit 3 was present at the meeting be-

(Testimony of J. W. Estabrook.)

tween yourself and Mr. Powell [26] and Mr. Huddleston? A. Yes, it was.

Q. Was anyone else present representing Local 206? A. Mr. Holmes.

Q. And what is Mr. Holmes' position?

A. Business Agent.

Q. Will you just go ahead and relate in your own words what took place at that meeting?

A. There was a general discussion of the agreement, and we started out by,—I think I made the statement,—in fact, I am sure I did, that we start out with Article 1 of the agreement.

Trial Examiner Bokar: May I see Board's Exhibit 3, please?

The Witness: Yes. (Hands document to Examiner.)

Q. (Mr. Walker continuing) Just go ahead and answer the question?

A. That we would discuss Article 1, and if we couldn't agree on it, why, we would mark it as such, and then go to the next article, and then finally find out how many we could agree on and how many we could not agree on. So that was agreeable with them, and that is the way we proceeded, along that line.

Q. Do you know a Mr. Towers? A. Yes.

Q. What is his position?

A. He is Financial Secretary of the Warehousemen's Union in [27] Oakland, California.

Q. Was he at the meeting? A. Yes.

(Testimony of J. W. Estabrook.)

Q. Was the agreement, or copies of the agreement which were before the parties, discussed?

A. Yes.

Q. What was the discussion?

A. Well, just what I told you, that we all agreed that we would start right in from the beginning of the agreement, article by article, to see how many we could agree on and how many we could not.

Q. Was that done? A. Yes.

Q. Mr. Estabrook, will you refer to Board's Exhibit No. 3, and state whether or not anything was said relative to paragraph 1 of the agreement at that meeting?

A. Well, they didn't agree to it.

Trial Examiner Bokar: You are referring specifically to Article 1, and not to paragraph 1?

Mr. Walker: Wait until I get my copy.

Trial Examiner Bokar: I want the record to be clear just what is being considered.

Mr. Ball: May I enter my objection to the question and answer on the ground that it does not state what was said, but merely a conclusion as to what the result was. [28]

Trial Examiner Bokar: Will you read the question and answer back, Mr. Reporter?

(Thereupon the last question and answer were read aloud by the reporter as above recorded.)

Mr. Ball: For the reason that,—

Trial Examiner Bokar: (Interposing) I will let

(Testimony of J. W. Estabrook.)

the answer stand, but, in effect, sustain the objection, by having the witness state what was said. You say that you did not reach an agreement?

The Witness: That is correct.

Trial Examiner Bokat: Tell what was stated, and by whom?

The Witness: Mr. Powell did most of the talking.

Trial Examiner Bokat: What did he say about Article 1?

The Witness: Article 1 is our closed shop clause, and Mr. Powell stated that the company policy has always been that they wanted to have the right to hire anybody they wanted, whether they belonged to the union or not.

Trial Examiner Bokat: I think you are mistaken. Are you sure that Article 1 refers to the closed shop?

The Witness: Oh, I beg your pardon.

Trial Examiner Bokat: Do you want to modify your answer?

The Witness: Yes, I will change the answer.

Trial Examiner Bokat: What was said concerning Article 1?

The Witness: The statement of Mr. Powell on Article 1 was that they objected to it the way it was written, and that if [29] we agreed to substitute whatever the law was for Article 1, they would agree to it. In other words, there was just some discussion as to changing it to read that the em-

(Testimony of J. W. Estabrook.)

ployer agreed to follow the law and give us the collective bargaining rights, or give the collective bargaining rights to our organization, as stated by the Board. I can't state it in the exact language. That is about all on Article 1.

Trial Examiner Bokat: Was there any reply by anyone representing the unions at that time?

The Witness: We told them it would stand the way it was at that time.

Trial Examiner Bokat: That was your answer?

The Witness: Yes.

Q. (Mr. Walker continuing) Then what did you do after this discussion on Article 1?

A. Well, we didn't agree to it, so we went to Article 2.

Mr. Ball: I move to strike that as a conclusion of the witness, whether or not there was an agreement. Let him state what was said and done.

Trial Examiner Bokat: Yes, I will sustain the objection and strike the answer.

Q. (Mr. Walker continuing) Was there anything said about Article 2? A. Yes.

Q. What was said about it? [30]

A. I want to take a minute to look it over.

Trial Examiner Bokat: Yes. I will declare a five minute recess at this time, and give you such opportunity.

(Thereupon a short recess was taken, after which proceedings were resumed as follows:)

(Testimony of J. W. Estabrook.)

Trial Examiner Bokat: The hearing will come to order, please.

Mr. Walker: Will you read the last question and answer, please?

(Thereupon the last question and answer were read aloud by the reporter as above recorded.)

Trial Examiner Bokat: You may answer.

A. So far as Article 2 was concerned, Mr. Powell stated it was not agreeable to the company for the reason that he didn't want to sign any sort of an agreement that would force their employees into a union.

Trial Examiner Bokat: Was that what he said?

The Witness: That is what he said.

Q. (Mr. Walker continuing) Did any of the representatives of Local 206 say anything to that?

A. Well, yes. We asked them why they would not want to give preference to employing members of the union.

Q. Did Mr. Powell say anything to that?

A. Mr. Powell stated that that was not the company policy.

Q. Does that cover everything that was said relative to [31] Article 2?

A. I believe that was all at that time, yes.

Q. And what did you do next?

A. We went to Article 3, Section 1.

Q. What was said about Article 3, Section 1, if anything?

(Testimony of J. W. Estabrook.)

A. Mr. Powell said it was agreeable with them if we would change it.

Q. Did he say in what way to change it?

A. Well, that wasn't the way that they had their working agreement, or, rather, their work week mapped out.

Q. Did he indicate in what way the wording of Section 1, Article 3, did not conform to their work week?

A. That is right; I am not sure just what he said on that. We skipped it.

Q. And then you went to Section 2?

A. That is right.

Q. Was there anything said about Section 2?

A. Yes.

Q. What was it?

A. Mr. Powell wasn't in favor of that because the hours stated did not conform to the way they operated.

Q. Did any of the representatives of Local 206 say anything to that?

A. I don't remember whether we did or not.

Q. What did you do next? [32]

A. We went to Section 3.

Trial Examiner Bokar: Well, after Section 2, did any of the company representatives make any suggestions as to how it should be changed?

The Witness: No, sir.

Trial Examiner Bokar: All right. Proceed.

The Witness: I beg your pardon.

(Testimony of J. W. Estabrook.)

Trial Examiner Bokat: Well, what was said?

The Witness: They asked us to write it in conformity with the policy they had in effect, or the policy they have in effect.

Trial Examiner Bokat: What was the policy that was in effect?

The Witness: I didn't get around to that. Section 3, Article 3, they also objected to that.

Q. (Mr. Walker continuing) What was wrong with that? A. As it was written.

Q. Did they indicate in what way they objected?

A. For the same reason as Section 1, Section 2, —for the same reason as Section 1 and Section 2 of Article 3.

Mr. Ball: I will object to that unless it is made clear.

The Witness: That it didn't conform to the way they were then working the store, and that if we would change it to the way the company was operating at that time they would go for it.

Q. (Mr. Walker continuing) Did they indicate in any way whether [33] or not any parts of Section 3, Article 3, did not conform to their present work policy? A. I have no recollection.

Q. Did any representatives of Local 206 say anything to that?

A. Not at that meeting, no, sir.

Q. And then what did you do?

A. We went to Article 4.

Q. Was there any discussion on Article 4?

(Testimony of J. W. Estabrook.)

A. Yes.

Q. And what was it?

A. The first discussion was on the classifications, and Mr. Powell told me that the classifications were correct with the exception of one or two,—that the titles of the classifications were correct,—but that there was one or two classifications in there that we had in there which were wrong, where we were calling them by the wrong name. That is the only part of the article that they agreed to at that time.

Mr. Ball: I move to strike that, “that is the only part of the article we agreed to”, without specifying what the parts were.

Trial Examiner Bokat: Please state what he said with reference to that article?

The Witness: After discussing the classifications, we immediately discussed wages.

Trial Examiner Bokat: Did you take up each classification [34] in article 4?

The Witness: Yes, we took up each classification in Article 4.

Trial Examiner Bokat: What was it?

The Witness: And we were given an hourly rate for each classification, and after we had written them all down, Mr. Powell was asked if that was their offer, or if that was what they were paying, and Mr. Powell stated that that was what they were paying. He said in some instances they were paying more, but that was the minimum hourly rate established by the company for those particular jobs. However, he stated that there was, in some

(Testimony of J. W. Estabrook.)

instances, a higher rate of pay paid in certain classifications.

Trial Examiner Bokat: As to certain individuals?

The Witness: Yes.

Trial Examiner Bokat: Within the classifications?

The Witness: That is correct.

Trial Examiner Bokat: And I assume the hourly rate, when figured into a weekly salary, was less than what the union had asked for in the proposed agreement?

The Witness: That is correct.

Trial Examiner Bokat: What was the unions' reply to the company's proposal that the rate of wages then being paid be the minimum rate?

The Witness: My reply was that that wasn't any agreement, [35] that they merely stated what they were; and then we asked Mr. Powell if they would consider an increase.

Trial Examiner Bokat: What did he say.

The Witness: Definitely, no.

Trial Examiner Bokat: Proceed.

Q. (Mr. Walker continuing) Were there any other parts of Article 4 that were discussed at that time? A. Yes.

Q. Which part was that?

A. After the classifications, there is a clause before you get to Article 5.

Q. The last paragraph of Article 4?

(Testimony of J. W. Estabrook.)

A. Yes. And they did not agree to that.

Q. What was said about that?

A. They objected to the Board of Adjustments.

Q. Was there anything further said?

A. Mr. Powell stated it was objectionable to them, because it didn't conform to company policy.

Q. Did any of the representatives of Local 206 say anything about the last paragraph of Article 4?

A. No; not at that time.

Q. And then what did you do?

A. We went to Article 5.

Q. Was there any discussion of Article 5?

A. Yes. [36]

Q. What was it?

A. Mr. Powell stated that they did not conform with company policy.

Q. Did he indicate in what way it did not?

A. No, sir.

Q. Then what did you do?

A. We went to Article 6.

Q. Was anything said about Article 6?

A. About all that was said was that they didn't agree to it, for the reason that they thought that type of employee should not get into the union, or be covered by the union, I mean.

Q. Did any representative of Local 206 say anything to that?

A. Yes. We explained why that was in the contract, that that was the usual procedure and was common practice, in other warehouse contracts, or

(Testimony of J. W. Estabrook.)

in other warehouse agreements, where we had working foremen or supervisors, and that they were paid a certain amount over the regular scale, but that they they had to belong to the union.

Q. After that explanation, did any representative of Montgomery Ward & Company say anything further?

A. The same objection was made that they made before we explained it, that they didn't see where we should discuss those people in those classifications.

Q. Was there anything more said about Article 6?

A. No, sir. [37]

Q. Then what did you do?

A. We went to Article 7.

Q. What was said?

A. They said to change it to six hours, instead of five.

Q. Did representatives of Local 206 say anything to that?

A. Yes.

Q. First, was any reason given for the requested change?

A. Not that I remember, other than that was the way they were doing it at the present time, and that was the answer I got at that time, I think; I am not positive.

Q. What did any of the representatives of Local 206 say to that?

A. Oh, I don't remember; I don't think we said anything.

(Testimony of J. W. Estabrook.)

Q. What did you do?

A. We just went to the next article.

Q. Was there any discussion about Article 8?

A. Yes.

Q. And what was it?

A. Article 8 was objectionable in its entirety, and they suggested that it be changed, the same as Article 1, that the company would follow the law as to discharges and discriminations, and so forth.

Trial Examiner Bokar: You are referring to Section 1 of Article 8?

The Witness: I am referring to the entire article, Sections [38] 1, 2, and 3.

Trial Examiner Bokar: Sections 1, 2, and 3?

The Witness: No, let me see. Sections 1 and 2, rather. And then when we got to Article 3, they objected because that was not the company policy on physical examinations, and so on and so forth.

Q. (Mr. Walker continuing) Was anything said with reference to Article 13, as set out in Section 2 of Article 8 at that time?

A. Yes, but we skipped that. We discussed it from time to time, but we didn't really get into that until we got to Article 13.

Q. What next did you do?

A. We went to Article 9.

Q. Was there anything said about that?

A. Yes.

Q. What was said?

(Testimony of J. W. Estabrook.)

A. They objected to it, because it did not conform with company policy.

Q. Was there anything further?

A. No.

Q. Then what did you do?

A. We went to Article 10.

Q. Was there anything said about that?

A. I don't think there was a great deal of discussion on [39] Article 10 one way or the other.

Trial Examiner Bokat: You mean there was no objection to that particular one?

The Witness: Not that I remember; I don't think there was.

Trial Examiner Bokat: Proceed.

The Witness: We then went on to Article 11.

Q. (Mr. Walker continuing) Was there anything said about that? A. Yes.

Q. What was it?

A. Well, I will have to read the article.

Trial Examiner Bokat: Take your time.

The Witness: I mean, read it into the record, in order to explain.

Trial Examiner Bokat: All right, if that is your answer.

The Witness: (Reading)

"Article 11. Strikes: The union agrees not to engage in any strikes or stoppage of work. The employer agrees not to engage in any lock-outs. Any action of the employees leaving jobs for their own protection in cases of a legally

(Testimony of J. W. Estabrook.)

declared strike by some union directly working on the job, if said strike is sanctioned and approved by the Portland Central Labor Council, shall not constitute a violation of this clause of this agreement."

Trial Examiner Bokat: All right, now will you explain.

The Witness: They agreed to that in this way: Mr. Powell stated that they would agree to Article 11 if we would just [40] have the first sentence stated, making it read, "The union agrees not to engage in any strikes or stoppage of work."

Trial Examiner Bokat: What was the union's reply?

The Witness: We didn't agree to that.

Mr. Ball: I didn't hear that?

The Witness: We didn't agree to that.

Q. (Mr. Walker continuing) What did you do then? A. We went to Article 12.

Q. Was there anything said about Article 12?

A. Yes. Article 12 was objectionable because it didn't conform with company policy.

Q. Was there anything else said about that?

A. No, sir.

Q. Did you pass on then?

A. Yes, we passed on to Article 13.

Q. Was there a discussion about that?

A. Yes.

Q. What was it?

(Testimony of J. W. Estabrook.)

A. Well, we discussed the article. That calls for a "Board of Adjustment" to settle all disputes that might arise, but Mr. Powell stated that he had no particular objection to a Board of Adjustment, or to a Board of that kind, providing, if the decision of the Board of Adjustment was against company policy, they could not live up to it.

Q. Did Local 206 say anything to that? [41]

A. No, sir.

Q. What next did you do?

A. Well, that was the end of our meeting so far as discussing the wage scale was concerned. We had a general discussion that lasted for a few minutes after that.

Q. What next was said?

A. We discussed further meetings and where they would be held, and Mr. Towers,—I don't know whether I am allowed to say that in this meeting, or to make the statement that he made,—

Q. Go ahead.

A. He was one of the representatives of the union from Oakland. He asked Montgomery Ward & Company why they continued to call these "discussions" instead of "negotiations".

Q. How did that happen to arise?

A. Well, I don't know; I can't say why Mr. Towers asked the question.

Q. Had something been said before Mr. Towers spoke up?

(Testimony of J. W. Estabrook.)

A. No. Mr. Towers asked if he was to understand if these were "discussions" or "negotiations". Mr. Powell said it was just a figure of speech, anyway, and that he would rather call them discussions than negotiations.

Q. Who had been using the figure of speech during the discussions? A. Mr. Powell.

Q. Was there anything further at that meeting? [42]

A. I believe that is about all.

Q. Were you present at any further meetings with representatives of Montgomery Ward & Company at any place? A. Yes, I was.

Q. Where? A. In Oakland.

Q. About what was that with respect to the last meeting that you have just described?

A. I think it was just before Thanksgiving; I am not sure whether it was just before or just after.

Mr. Ball: I think I can tell you. November 25.

The Witness: I think that is right.

Q. (Mr. Walker continuing) Who were present at the meeting in Oakland representing the union?

A. There was Mr. Holmes and myself from Local 206; Mr. White, representing the Western Warehouse Council; Mr. Towers, representing the Oakland Warehouse Union; Mr. Cohn, Mr. Wood, and Mr. Nathan, representing the Retail Clerks' Local, and also the International; and there were several other fellows that I didn't know.

(Testimony of J. W. Estabrook.)

Q. Who represented Montgomery Ward & Company?

A. Mr. Powell and, I believe, this gentleman right behind Mr. Ball (pointing.) I am not certain.

Mr. Ball: Mr. Denecke.

Q. (Mr. Walker continuing) Mr. Denecke?

[43]

A. I am not positive whether he was there or not. Mr. Powell was the only one I knew. I knew there were other representatives, and I imagined they were locally from Oakland,—local men from Oakland. However, I have no way of knowing.

Q. How did that meeting start?

A. It started with a general discussion of the agreements.

Trial Examiner Bokar: When you say “agreements”, what do you mean?

The Witness: Well, it started out by us wanting to know what position Montgomery Ward & Company was going to take in these negotiations from then on.

Trial Examiner Bokar: Was the same proposed agreement discussed as a basis of negotiation, or were there others?

The Witness: Yes, it was.

Trial Examiner Bokar: So far as the union concerned, it was the same agreement?

The Witness: Yes, it was.

Trial Examiner Bokar: The same identical proposed agreement?

(Testimony of J. W. Estabrook.)

The Witness: That is correct.

Mr. Ball: May I interpose a suggestion that the spokesman in each case be identified?

Trial Examiner Bokar: Yes.

The Witness: The spokesman in the Oakland meeting was Mr. White and myself.

Trial Examiner Bokar: Who was the spokesman for the company? [44]

The Witness: Mr. Powell.

Q. (Mr. Walker continuing) And who was Mr. White?

A. Mr. White was the Secretary of the Western Council of Warehousemen.

Q. Was any suggestion made relative to the manner in which the form of agreement would be taken up? A. It was.

Q. What was that suggestion?

A. We wanted to know who we were supposed to negotiate with. At that time we made the suggestion,—I will have to relate our conversation the best I can remember it.

Q. Go ahead.

A. I made the statement, and I think Mr. White did, too, that we had tried to negotiate with Mr. Powell and Mr. Huddleston; I made the statement that we had tried to negotiate in Oakland, but we were not getting anywhere, and that we thought we were being stalled, that we had heard so much about company policy that we were getting tired of it, and we wanted to know what it was, if they had a

(Testimony of J. W. Estabrook.)

book on company policy, and, if so, we would like to see it, so that we could tell whether or not they had anything in there with reference to company policy, so that we would know better what to do. They didn't seem to have a book, or seem to be able to furnish us with a book. It appeared that they didn't have any company policy.

Mr. Ball: I move to strike that. [45]

Trial Examiner Bokat: That may be stricken.

Q. (Mr. Walker continuing) Was there a booklet, or anything in writing, furnished by you, or, rather, furnished to you by the company representatives which contained anything with reference to company policy?

A. Mr. Powell said they didn't have any.

Trial Examiner Bokat: This took place where?

The Witness: In Oakland, California.

Q. (Mr. Walker continuing) What else was said about company policy at that time?

A. I don't know; that was about the sum and substance of it, I think.

Q. Did Mr. Holmes take part in the meeting?

A. We took part in the discussion, all of us; we all took part in the discussion.

Q. Do you recall that he said anything, or what he said?

A. No; the only other conversation that I can recall was that Mr. White and myself volunteered to go to Chicago with Mr. Powell, if it was necessary, in order to negotiate our contract; we stated that

(Testimony of J. W. Estabrook.)

we wanted to talk with the people that we were to negotiate with, and up until then we had not been able to.

Trial Examiner Bokat: What did Mr. Powell say to that, if anything?

The Witness: I don't remember word for word; I think he said [46] that he would take that under advisement.

Trial Examiner Bokat: Did he make any representation that he had the right to bind the company, or did he indicate that he could not bind the company, or what was the situation?

The Witness: All I can give you is the conclusion that I drew.

Trial Examiner Bokat: I would rather not have that. I would rather have what was said.

The Witness: Then I would not be able to answer the question. The only thing I could say is, when we asked Mr. Powell for an answer, he never gave any.

Trial Examiner Bokat: Can't you state what was said?

Mr. Ball: I move to strike the last statement of the witness as a conclusion.

Trial Examiner Bokat: It may be stricken.

Did he make any specific answer as to who was authorized to bargain for the company?

The Witness: Yes.

Trial Examiner Bokat: And did he state that he was authorized to bargain for the company?

(Testimony of J. W. Estabrook.)

The Witness: Yes, but these questions, or these answers that he gave as to these questions I have testified to,—he always stated, or in the instances I gave you, that it was contrary to the company policy.

Trial Examiner Bokat: When did he tell you he had authority [47] to bargain for the company?

The Witness: I am not sure I can tell you when he first stated it. I know we asked him at the meeting in Oakland,—we asked Mr. Powell. That same question was asked many times in that same meeting, and he would first reply that he was representing the Board of Directors in Chicago, and then the next time when the question was asked he would state,—he would state various things. When certain matters were asked about in the agreement, or various questions asked him, he would answer by stating that those things were against the company policy. And then is when we volunteered to go to the people who would have the power to change the company policy.

Trial Examiner Bokat: What was his reply to that?

The Witness: He said he would take that under consideration.

Trial Examiner Bokat: Proceed.

Q. (Mr. Walker continuing) Did you ever get an answer to your suggestion to go to Chicago?

A. We never did.

Q. At any time did you relate to Mr. Powell

(Testimony of J. W. Estabrook.)

what had been said between yourself, Mr. Barr, Mr. Ball, and Mr. Heidinger in Chicago?

A. I did.

Q. Did Mr. Powell say anything to that?

A. No, sir.

Q. Was any particular part of the agreement discussed at the [48] Oakland meeting?

A. No, sir.

Q. Do you know whether or not Mr. Powell ever contacted Chicago relative to that situation?

A. I couldn't answer that; I don't know.

Q. Was there anything further at that meeting in Oakland?

A. No, I don't think so; there may have been some general discussion, but I don't remember what it was.

Trial Examiner Bokat: Did you discuss the proposed contract generally?

The Witness: We started to, Mr. Examiner, but we never got around to it.

Trial Examiner Bokat: For what reason, if you know?

The Witness: Well, we all got to arguing about company policy, and that is as far as we got.

Trial Examiner Bokat: Did Mr. Powell take any position with regard to what he had stated in the previous meeting held in Portland?

The Witness: Well, I don't quite understand you.

Trial Examiner Bokat: You have already stated

(Testimony of J. W. Estabrook.)

that you did have a meeting with Mr. Powell and several other representatives of the company sometime in October, 1940, where you discussed certain provisions of the contract.

The Witness: That is right.

Trial Examiner Bokst: And that the company took a certain [49] position with reference to each article?

The Witness: That is correct.

Trial Examiner Bokst: What was the position of Mr. Powell at the meeting in Oakland with regard to these particular provisions?

The Witness: The position of Mr. Powell was that he didn't have the power to change company policy.

Trial Examiner Bokst: You mean the position that Mr. Powell had taken, or the company had taken in October, 1940 was the same then?

The Witness: Yes, that is correct.

Trial Examiner Bokst: At the Oakland meeting?

The Witness: That is correct.

Trial Examiner Bokst: You say there was then quite an argument about the definition of company policy?

The Witness: Yes.

Trial Examiner Bokst: And then the meeting broke up?

The Witness: Yes.

Trial Examiner Bokst: Did you agree to meet again at the conclusion of that meeting?

(Testimony of J. W. Estabrook.)

The Witness: No.

Trial Examiner Bokat: Was Mr. Powell to give you any sort of a reply as to whether or not he was going to supply you with any more definite information?

The Witness: Mr. Powell did make the statement that he [50] would take up the advisability of the representatives of the union and himself going to Chicago.

Trial Examiner Bokat: Did he notify you about that, or, promise to notify you about that?

The Witness: I don't think so.

Trial Examiner Bokat: All right. This might be a good place to stop for lunch. I think, beginning tomorrow, we will take one hour for the noon adjournment. However, today, in view of the fact that counsel need a little more time to get various matters taken care of, I will allow an hour and a half for lunch. So we will adjourn at this time until 1:35 P.M. We will stand recessed at this time.

(Whereupon the hearing was recessed until 1:35 p.m.) [51]

Afternoon Session

(Whereupon, at 1:35 p.m. the hearing was continued pursuant to the taking of the noon recess, as follows:)

Trial Examiner Bokat: The hearing is now in session. You may proceed when you are ready, gentlemen.

(Testimony of J. W. Estabrook.)

Q. (Mr. Walker continuing) Mr. Estabrook, have you finished describing all that occurred at the Oakland meeting? A. Yes, I have.

Q. Now, following that meeting, did you meet with representatives of the respondent again at any time?

A. The next meeting that was held was on the 12th day of December,—I am not sure,—I think that was the date.

Q. Where was that meeting?

A. In Mr. Huddleston's office.

Q. Who represented Local 206 at that time?

A. Myself and Mr. Holmes.

Q. Who represented the respondent in addition to Mr. Huddleston, if he was there?

A. Mr. Powell and Mr. Barth.

Q. Was a form of agreement before the parties at that time? A. Yes.

Q. Were other representatives of other organizations present, in addition to representatives of Local 206? A. There was.

Q. What other organizations were there? [52]

A. There were several representatives of the Western Warehouse Council. Mr. Glazier and Mr. Lamberton; there was Mr. Langford and Mr. Dixon of the Clerks' Union; and Mr. Allen and Mr. Hicks of the Office Workers' Union; there was Gust and Anderson and Phil Brady, officers of the Portland Central Labor Council, also Mr. Landye, our at-

(Testimony of J. W. Estabrook.)

torney, and Jack Schlaht of the Teamsters Union. I believe that was all.

Trial Examiner Bokart: That meeting took place in Portland?

The Witness: Yes. And Mr. Ashe was present, not representing any labor union but representing the Federal Government, or some bureau of the Federal Government.

Q. (Mr. Walker continuing) How did that meeting open up?

A. Well, it had been called, and we opened the meeting up by stating that we were there to see if we could settle the strike and get an agreement negotiated.

Mr. Ball: May I suggest that he amplify that by indicating who said that?

Mr. Witness: I made that statement.

Q. (Mr. Walker continuing) Did you indicate who was representing the respondent?

A. Yes. There was Mr. Powell, Mr. Huddleston, and Mr. Barth; I am not sure whether anyone else was there. Denecke, yes, he was there.

Q. After your opening statement, what next took place?

A. I am sure I couldn't say. I furnished everyone with a copy [53] of the proposed wage scale and working agreement, and the same discussions on each article were entered into as had been previously discussed. I mean, it was the same type of meeting.

Trial Examiner Bokat: Was the same type of agreement, as you had presented before, known as Exhibit No. 3, discussed?

The Witness: Yes.

Trial Examiner Bokat: Had it been modified?

The Witness: No.

Trial Examiner Bokat: Was it the same agreement?

The Witness: Yes.

Trial Examiner Bokat: The same identical agreement?

The Witness: That is right.

Trial Examiner Bokat: All right.

The Witness: From there on, Mr. Ashe did most of the talking. Of course, everyone was asking questions. Mr. Ashe seemed to do most of the talking.

Q. (Mr. Walker continuing) What did Mr. Ashe say?

A. For one thing, he asked Mr. Powell if he would arbitrate.

Q. Arbitrate what?

A. The entire agreement.

Q. Was there any reply?

A. There was.

Q. Who replied? A. Mr. Powell.

Q. What did Mr. Powell say? [54]

A. He said he didn't have any objection, but if the arbitration award was against the company policy, they would not live up to it.

Q. Did Mr. Ashe say anything in addition to that?

(Testimony of J. W. Estabrook.)

A. Yes. He discussed several plans to try to bring the strike to a close. He asked Mr. Powell if they had any counter-proposal to make, and Mr. Powell said yes, they did.

Q. When did the strike begin?

A. December 7th, Saturday, 7:30 o'clock in the morning.

Q. What organizations were concerned in the strike?

A. The Warehousemen, the Office Workers, and the Retail Clerks.

Q. Now, coming back to the meeting. You mentioned Mr. Ashe's comment about a counter-proposal.

A. Yes.

Q. What was that about?

A. To call the strike off and to get the people back to work.

Q. Who made that proposal?

A. Mr. Powell.

Q. What else took place at that meeting?

A. Well, I don't think a great deal of anything after that took place. There was another meeting scheduled for the next day.

Q. How many meetings were held?

A. Altogether,— [55]

Q. At which Mr. Ashe was present?

A. There were three meetings held within a period of three or four days.

Q. All succeeding this first one that you have mentioned?

(Testimony of J. W. Estabrook.)

A. Yes. There was one the first day, and then I think there was two days before the next one.

Mr. Ball: If I may clarify that, perhaps we can have the record straight here. I will suggest it to the witness, and it may refresh his recollection.

Trial Examiner Bokat: Go ahead.

Mr. Ball: Friday the 13th, Saturday the 14th, and Monday the 16th.

The Witness: I believe that is right. Yes, that is right.

Trial Examiner Bokat: Was there a meeting on the 12th?

The Witness: No, it should have been the 13th.

Trial Examiner Bokat: Now, can anyone give a more accurate description of just what position Mr. Ashe holds?

Mr. Ball: I cannot give his exact title, but he is a member of Mr. Steelman's Conciliation Service of the Department of Labor.

Trial Examiner Bokat: All right.

The Witness: The meeting the next day was attended by about the same group, with the exception of Mr. Landye. I don't think Mr. Landye was at the second meeting. In fact, I am sure he was not. It was just a general discussion. We went [56] over the same ground we had the day before, with the exception that there seemed to be a lot of misunderstanding between Mr. Powell and Mr. Barth and Mr. Huddleston as to what was said the day before,

(Testimony of J. W. Estabrook.)

and at that time Mr. Ashe asked Mr. Powell if the company would bring in a girl, or if they had any objection to him bringing in a girl at the future meetings for the purpose of taking down everything that was said. Mr. Powell said he didn't think it was necessary to do that, and by not having someone in there to make a record of everything, we could broaden the conversation. Again the matter of arbitration was discussed,—and it was either at the second meeting,—no, I believe it was at the third meeting.

Q. (Mr. Walker continuing) You used the phrase “at the second meeting the parties went over the same ground as the day before”, or words to that effect. What did you mean by going over the same ground?

A. Well, we discussed arbitration and further negotiations, and so on and so forth.

Q. Was there a form of agreement there at the second meeting? A. There was.

Q. Was there any discussion on it?

A. Yes, but most of the discussion at the second meeting was on the Retail Clerks' agreement. However, I don't recall just what the discussions consisted of.

Trial Examiner Bokar: You mean, in addition to the agreement [57] submitted to your union, the Retail Clerks had also submitted an agreement?

The Witness: Yes, the Retail Clerks had also submitted an agreement, or a proposed agreement.

(Testimony of J. W. Estabrook.)

Trial Examiner Bokat: You stated that at the meeting on December 16th, the parties went over the agreement clause by clause?

The Witness: No, I beg your pardon. We didn't go over all of it. We went half way through it, and the meeting broke up.

Trial Examiner Bokat: What happened in the meeting? Had the company changed its position in any way?

The Witness: No. they had not.

Trial Examiner Bokat: You mean, they took the same position they had in the previous meeting with regard to the various clauses of the agreement, and as to the proposed articles?

The Witness: That is correct.

Trial Examiner Bokat: All right. Proceed.

Q. (Mr. Walker continuing) Now, who appeared at the third meeting?

A. Well, the same group, with the exception of, —I don't think Glazier and Lamberton were down there at the third meeting. However, I am not sure about that. I am not exactly sure whether the representatives of the Portland Central Labor Council were there. However, the company has a record of that. [58] I think you could check that with Mr. Ball.

Q. Was there a form of agreement before the parties at the third meeting? A. Yes.

Q. And was it the same form as was used in the other meetings? A. Yes.

(Testimony of J. W. Estabrook.)

Q. Now, will you just go ahead and describe from that point on, what happened? Will you state what discussion took place?

A. There was not a great deal of discussion at the third meeting. The only discussion that I can remember was that Mr. Ashe made a few remarks to Mr. Powell, and, to be honest with you, I don't remember what they were; they were not of too much consequence, and I don't remember what they were. However, I recall Mr. Langford or Mr. Allen asked Mr. Powell a question.

Q. What was the question?

A. The question was, "Will you sign an agreement with the Warehousemen's Union with the same wages, hours, and working conditions as of the day before the strike?"

Q. Was that question answered?

A. It was.

Q. By whom? A. Mr. Powell.

Q. What was said? A. "No." [59]

Q. Did Mr. Powell say anything else relative to the question? A. Not that I can remember.

Trial Examiner Bokar: Didn't he say why?

The Witness: No, sir.

Q. (Mr. Walker continuing) Was the form of agreement discussed at that third meeting, if you recall? A. Yes.

Q. You mean the same as this one (indicating)?

A. Yes, Board's Exhibit 3.

(Testimony of J. W. Estabrook.)

Q. There was some discussion?

A. Yes, there was some discussion as to the union being willing to make some changes on some of these articles.

Q. Who proposed that matter? A. I did.

Q. And what was said?

A. Well, the only thing that was said at that time was the customary answer, that he always gave, it was against company policy.

Q. Can you indicate what portions of the agreement it was that the union suggested it would change the language of, to which you received the answer just now related?

A. In the first place, we talked about Article 2. The union was willing to consider a union shop instead of a closed shop, and the answer that I received from Mr. Powell was that the employer would not consider any kind of a union shop, closed [60] shop, or preferential hiring.

Trial Examiner Bokar: What do you mean by "union shop"? Was that clear to Mr. Powell?

The Witness: Yes, it was clear to Mr. Powell. It was described at great length, that the company would be privileged to hire anyone that they seen fit, without the consent of the union, with the stipulation that, after they had been employed thirty days or sixty days or ninety days, they would have to become members of the union. A closed shop is where they have to hire men through the union.

Trial Examiner Bokar: I understand. I just

(Testimony of J. W. Estabrook.)

wanted to know if you explained that to Mr. Powell?

The Witness: Oh, yes.

Q. (Mr. Walker continuing) What other portions of the agreement did Local 206 suggest be changed?

A. With respect to the wage scale we stated that all that we were asking,—we stated that we were not making an ultimatum with reference to the wage scale, but that we were willing to consider any counter-proposal they would give us; but the only counter-proposal they would give us was the wage rate that they were then paying, and we were not satisfied with that.

Q. When you mentioned counter-proposal, how did the question of counter-proposal come up?

A. I beg your pardon on that. If I said “counter-proposal”, I was mistaken. They didn’t make any counter-proposal. When [61] we discussed wages, they just read off a list of what the minimum was in all the classifications. It was not given to us as a form of counter proposal.

Mr. Ball: I move to strike that as the opinion of the witness. The word “counter-proposal” is susceptible of many meanings, and it goes to the heart of the issue in this case. I think that the witness should be asked to describe factually what was said and what was done, and what was offered by both parties.

Trial Examiner Bokat: That motion is granted.

(Testimony of J. W. Estabrook.)

Will you ask the question again of the witness, and ask him to state exactly what was said.

Q. (Mr. Walker continuing) Who read the wage scale to the persons present at that meeting?

Mr. Ball: May I object unless it is specified as to what time is referred to, and what meeting when the wage scale was read.

Trial Examiner Bokat: Yes, I think that is reasonable.

Mr. Walker: We are talking about the last meeting.

Mr. Ball: Well, let us have it specific.

Q. (Mr. Walker continuing) We are talking about the last meeting?

A. Yes. But they didn't read any wage scale then,——

Trial Examiner Bokat: You mentioned the reading of a wage scale. [62]

The Witness: The meeting I am referring to where they read the wage scale was the meeting when we met in October,—I believe it was October 12th, when we met with Mr. Powell, Mr. Barth, and Mr. Huddleston. That is the first meeting.

Trial Examiner Bokat: That is the first meeting, the one which you had in mind?

The Witness: Yes.

Trial Examiner Bokat: You are merely reiterating what you said before as to what took place?

The Witness: Yes.

(Testimony of J. W. Estabrook.)

Mr. Walker: I think the witness got into that when he explained the use of the term "counter-proposal".

Trial Examiner Bokat: I understand.

Q. (Mr. Walker continuing) Now, what else took place at the third meeting in December?

A. We also, in that third meeting in December, offered to submit all or any part of this agreement to arbitration.

Q. Did you get any reply to that?

A. Yes. I replied to that question before. Shall I repeat it, Mr. Examiner?

Trial Examiner Bokat: You said the desire to arbitrate was discussed at the third meeting. I think you said before it was the second meeting. Was it discussed again?

The Witness: Yes, it was discussed again; it was discussed at all the meetings, and Mr. Powell answered in the same way, [63] that if the arbitration was contrary to the company policy, the company couldn't carry it out.

Trial Examiner Bokat: Now, on this question of wage scales. Aside from the fact that at the first meeting Mr. Powell read the minimum hours or the rates for the various classifications, were wages generally discussed at each meeting?

The Witness: Not so much after that.

Trial Examiner Bokat: After the first meeting?

The Witness: The most discussion was at the meeting when Mr. Powell read the minimums.

(Testimony of J. W. Estabrook.)

Trial Examiner Bokat: Was the question discussed at any other meeting?

The Witness: Yes, it was.

Trial Examiner Bokat: I am interested in what was said.

The Witness: Mr. Powell made the statement that,—any time we discussed those wages, Mr. Powell made the statement that the company was in no position to grant any increases.

Trial Examiner Bokat: Do I understand from your testimony that the company took the same position they had the first meeting?

The Witness: Yes.

Trial Examiner Bokat: That they would pay the prevailing wages then in effect?

The Witness: Yes, and that they had no intention of making any wage increases. [64]

Trial Examiner Bokat: Who made the statement?

The Witness: Mr. Powell.

Q. (Mr. Walker continuing) Did Mr. Powell give any reason behind his statement?

A. No, sir. Well, just a moment. Mr. Powell did give a reason several times. I can't recall the meetings exactly, but Mr. Powell gave as his reason that they were paying as much as anybody else in the warehouse industry. Of course, there was a difference of opinion on that.

Trial Examiner Bokat: Just state what was said. The term "difference of opinion", of course, does not help us any.

(Testimony of J. W. Estabrook.)

The Witness: What he said was that they were paying just as high wages as anybody else in the city of Portland.

Trial Examiner Bokat: You said that he said that they couldn't pay any more?

The Witness: No, he didn't say that; he said they would not pay it.

Trial Examiner Bokat: All right. Was Mr. Ashe present at the third meeting?

The Witness: Yes, he was.

Mr. Walker: That is all.

Trial Examiner Bokat: You may cross examine.

Cross Examination

Q. (By Mr. Ball) When you were in Washington, Mr. Estabrook, how was it that you happened to meet Mr. Barr? [65]

A. I was out at the ball game.

Q. You just ran into him casually at that time?

A. Yes.

Q. Was Mr. Barr friendly in his attitude toward you? A. Oh, yes.

Q. And when you came to Chicago, how did you get in touch with Mr. Barr?

A. I called him from my hotel.

Q. Do you remember what he said in answer to your call?

A. Yes, to come right on over.

Q. At that time were you prepared to discuss a contract with Mr. Barr? A. Yes.

(Testimony of J. W. Estabrook.)

Q. You had a contract prepared at that time and ready to submit? A. I did.

Q. And you submitted a written contract identical with the one in evidence as Board's Exhibit No. 3 to Mr. Barr? A. That is right.

Q. Isn't it a fact that when you called on Mr. Barr, you said that you hadn't yet begun to write out the terms of the contract, and weren't really ready to present one?

A. Oh, no. Let us go back to the ball game. I had a copy of the contract in my pocket, and I kidded Mr. Barr by telling him there was no use going to Chicago, "I have got it in my pocket, and you can sign it now here in Washington, D. C.."

[66]

Trial Examiner Bokar: That was where?

The Witness: In Washington, D. C.

Trial Examiner Bokar: At the ball game?

The Witness: That is right.

Q. (Mr. Ball continuing) From the time the Warehousemen were certified, you had no discussions with anybody in Montgomery Ward & Company until you met Mr. Barr?

A. I wouldn't say that.

Q. Where did you have any discussions with anyone representing Montgomery Ward?

A. I think Mr. Huddleston and I had several meetings, but not specifically as to the contract.

Q. I am referring to the contract.

A. No.

(Testimony of J. W. Estabrook.)

Q. Do you recall how it was that you sent a copy of that contract to Mr. Huddleston?

A. No, I don't. I either mailed it to him or took it up there.

Q. Then it may well be a fact that you sent a copy to Mr. Huddleston through the mail?

A. Yes, I will stand on that. [67]

Q. Do you recall what date it was when you sent the contract to Mr. Huddleston? A. No, sir.

Trial Examiner Bokat: In addition to the one that you gave to Mr. Barr, you mailed another one?

The Witness: When I got back here, I must have done so; I think he got one.

Trial Examiner Bokat: Did you mail him one, or how did you give it to him?

The Witness: I either mailed him one, or he got one when I got back.

Trial Examiner Bokat: All right.

Q. (Mr. Ball, continuing) Do you recall learning that Mr. Powell was going to be in Portland along about October 22 to meet with Mr. Dixon?

A. Yes.

Q. Do you recall whether or not you telephoned Mr. Barth asking if you could see Mr. Powell when he was here then?

A. No, I don't recall that; possibly I did.

Q. Do you recall that on October 22, Mr. Powell did call you, when he was in Portland, about a meeting with Mr. Dixon, and in that telephone call you stated that you wanted to submit an agreement

(Testimony of J. W. Estabrook.)

and discuss it with Mr. Huddleston and him?

A. Yes.

Q. At that time, you mentioned your conversation with Mr. [68] Barr to Mr. Powell?

A. That is right.

Q. You recall that on that day Mr. Huddleston was in Denver, and that Mr. Powell suggested that you send a contract to Mr. Huddleston, or a copy of it?

A. I was told by someone that Mr. Huddleston was in Denver, but Mr. Huddleston was in possession of one of the contracts, or proposed contracts, before he went to Denver.

Trial Examiner Bokar: That is not the question.

Mr. Ball: I move to strike that answer.

Trial Examiner Bokar: Will you answer the question?

A. No, I didn't send a contract back to Denver.

Q. (Mr. Ball, continuing) I didn't ask you that. I asked you if Mr. Powell didn't ask you to send a copy to him?

A. No, I don't think so.

Q. What is your answer? A. No.

Q. Did Mr. Powell also suggest that you send a copy to him at Oakland?

A. Yes, I know that he suggested that I send a copy to Oakland, and I did.

Q. At that time, Mr. Powell suggested that you call Mr. Huddleston and arrange a time for a meeting when Mr. Powell could be back in Portland?

A. I believe that is right. [69]

(Testimony of J. W. Estabrook.)

Q. Do you recall that on October 25, you called Mr. Huddleston for an appointment to discuss the contract with Mr. Huddleston and Mr. Powell?

A. I don't recall the exact date. I know that I had that conversation.

Q. Mr. Huddleston called you back about October 26 to fix a date for such a meeting?

A. I believe he did.

Q. Do you recall that you were in San Francisco on November 6 and called Mr. Powell in Oakland?

A. Yes.

Q. Do you recall that? A. Yes.

Q. To fix a date? A. Yes.

Q. And that Mr. Powell suggested November 12 for that date?

A. I believe that is right.

Q. And that meeting of November 12 was the first meeting that you had to discuss a working agreement?

A. That is the meeting at which Mr. Towers, Mr. Holmes and myself were present.

Q. That is the meeting that you described earlier as being in October? A. No.

Q. It was November 12 that the first meeting was held? [70]

A. That Mr. Powell was there?

Q. Yes. A. Yes.

Trial Examiner Bokar: That is where the classifications of wages were discussed, and the agreement discussed, article by article?

(Testimony of J. W. Estabrook.)

The Witness: That is correct.

Q. (Mr. Ball, continuing) Now, if you will turn to your contract, Board's Exhibit No. 3. Do you recall any discussion of Article 1? A. Yes.

Q. In your discussion of Article 1, do you recall Mr. Powell suggesting that the statement set forth in Article 1 might well be put in the "whereas" form; that is, it might be put in a "Whereas" clause, and if that were done, an agreement might be reached on that?

A. Yes, he said that.

Q. And that that was an agreeable procedure with you? A. It was?

Q. You agreed that it might be put in any contract that might be drawn, that way?

Mr. Walker: You are speaking of November 12?

Mr. Ball: Yes.

Trial Examiner Bokar: You mean "Whereas" to be inserted therein in lieu of the statement? [71]

Mr. Ball: Making it a "Whereas" clause, instead of a statement.

The Witness: Yes, I know his explanation. We would agree to that, but he didn't want the wording that was in there at all.

Trial Examiner Bokar: That is what I am trying to find out.

The Witness: He didn't want the wording that was in there at all.

Q. (Mr. Ball, continuing) Do you recall the exact wording?

(Testimony of J. W. Estabrook.)

A. I don't recall the exact wording, not being a lawyer. He wanted to state in there that "Whereas the employer wanted to follow the law, or the letter of the law," or something to that effect; he didn't want the same article as that at all.

Q. You will recall, however, that you did discuss how this subject would be covered in the final agreement that might be reached between the parties?

A. Yes, I recall discussing that.

Trial Examiner Bokar: Do I understand that you gentlemen did not agree with the terminology of the phrase suggested by the company, or by Mr. Powell, with regard to that article?

The Witness: We didn't agree to the way they wanted it written.

Trial Examiner Bokar: But you did agree to the word "Whereas"?

The Witness: Yes, the word "Whereas", we agreed to that. [72]

Q. (Mr. Ball, continuing) You do remember that Mr. Powell stated that any contract that might be reached would contain substantially all that particular article?

Mr. Landye: The question of what the substance is is merely a legal conclusion of the witness.

Trial Examiner Bokar: Yes, I understand that. It might be disputed.

Mr. Ball: I will withdraw the question.

Q. (Mr. Ball, continuing) I will put it this way: Mr. Powell did make an offer of the form in

(Testimony of J. W. Estabrook.)

which it would be referred to in the final form of contract?

A. Yes, he did make an offer.

Q. You recall, with regard to Article 2, Mr. Powell stated the reasons why the company could not enter into such an agreement?

A. Yes.

Q. You recall that he made the statement that the company was willing to allow the men full freedom of choice as to whether or not they wanted to join the union?

A. Yes.

Q. And that the company would agree to no clause which would force an employee, directly or indirectly, to join the union?

A. Yes.

Q. And that the company could not accept the proposal as contained in this article? [73]

A. Yes.

Q. With regard to Section 1, Article 3, you will recall that Mr. Powell did say that the company would agree to a provision that covered the subject, something like this, "That no employee shall work less than four hours a day"? Do you remember that he agreed that that would be proper?

A. I don't recall.

Q. You don't recall?

A. No. But,—

Q. However,—

Mr. Walker: Let him finish the question, please.

Mr. Ball: Certainly.

A. I will tell you frankly, in answer to that

(Testimony of J. W. Estabrook.)

question, that the only recollection I have is that Mr. Powell did offer to go for that section, and the following two sections, provided they were changed, and he made this statement most definitely, if they were changed to coincide with what they were doing as a matter of company policy.

Q. (Mr. Ball, continuing) Do you mean to say that he used the words "as a matter of company policy" or "as a matter of present company practice"?

Trial Examiner Bokar: Is there any real distinction?

Mr. Ball: I don't know, but it is merely a matter of reiteration, in order to get at the fact.

Q. (Mr. Ball, continuing) You recall, with regard to Section 2, [74] you did have some discussion about the needs of the customers in the mail order department, requiring the plant to start as early as 5:30 in the morning?

A. Yes, I remember that.

Q. And Mr. Powell stated why the 5:30 starting hour would be necessary in order for the company to efficiently conduct its business?

A. I don't recall him saying that.

Q. But he may have, so far as your present recollection is concerned?

A. It could be.

Q. With regard to the discussion of Section 3 of Article 3, do you recall Mr. Powell stating that he had no objection to Section 3, except that we could not pay overtime on Saturdays, Washington's Birthday, or Armistice Day?

(Testimony of J. W. Estabrook.)

A. I don't recall anything like that.

Q. You recall that something was said differentiating Washington's Birthday and Armistice day from the other holidays?

A. No. The only thing I can recall is that there was an objection to it.

Q. So far as your present recollection is concerned, the matter could have been gone into?

A. Well, it could have been, I guess.

Trial Examiner Bokat: I want to know whether that is according to your recollection. You say that it could have been. [75] That doesn't help me.

The Witness: I didn't make any notes of the meetings at all, and so far as that is concerned, the company had a full opportunity to make a correct record.

Trial Examiner Bokat: I understand that, but I merely asked you if that was your recollection.

The Witness: My recollection is "No".

Q. (Mr. Ball, continuing) Do you recall how long this meeting took?

Trial Examiner Bokat: What meeting are you referring to?

Mr. Ball: The meeting of November 12.

A. A couple of hours; it might have been a little more than that. I think it was a couple of hours.

Trial Examiner Bokat: When you say "couple" do you mean two, or three, or four?

The Witness: A couple is two, according to my language.

(Testimony of J. W. Estabrook.)

Q. (Mr. Ball, continuing) Where was the meeting held?

A. In Montgomery Ward & Company, Mr. Hudleston's office, the third floor, in the afternoon.

Q. Now, turn to Article No. 8, Sections 2 and 3. Do you recall Mr. Powell stating that the company could not agree to put the final decision as to discharge of an employee to a third party, or in the hands of a third party, or anyone other than itself?

A. I am sure that he made that statement. [76]

Q. And he advanced as his reason why the company objected to that particular wording of that subject matter, the fact that it was necessary for the company to control the hiring and firing of employees?

A. He always insisted on that.

Q. And he therefore objected to the wording submitted by the union contract on that point, or the proposed contract?

A. No, he didn't do it just like that, Mr. Powell.

Q. Give us your best recollection.

A. My best recollection is that when we were discussing Section 3 of Article 8, and also Section 2, Mr. Powell said that he wanted to be the final judge of those matters.

Q. Pertaining to the discharge or hiring of employees?

A. He said that the Board of Adjustment would be all right, but if they disagreed with the company, they could not go along with the Board of Adjustment's decision.

(Testimony of J. W. Estabrook.)

Q. Because,——

A. ,—of the desire of the company to have the final say.

Q. As to Article 9, what is the substance of what took place on that article?

A. That is seniority, is it not?

Q. Yes. A. Well,——

Q. You had some discussion of that clause in the first meeting? A. Yes. [77]

Q. Do you recall more fully what was said on that particular clause?

A. Not word for word, but in general, he gave us the same answer that applied to all the articles.

Q. Do you remember that efficiency was discussed as the basis of the selection of an employee as against seniority?

A. To the best of my recollection, yes.

Q. And they talked about adaptability, promotability, and flexibility of employees and their age as being matters of consideration?

A. Yes, they discussed that as to present practice. They said that was the present practice.

Q. And that the sex or marital status of an employee might enter into the determination of the selection of an employee? A. I think so.

Q. There was a rather full exposition of what the company's practices were with regard to the selection of employees?

A. Yes, and they agreed to that article provided that it was changed to meet their present practice.

(Testimony of J. W. Estabrook.)

Q. Now, turning to this wage scale. Do you remember that Mr. Huddleston was present at the meeting on November 12? A. Yes.

Q. Do you remember Mr. Huddleston explaining the company's policy as to wages, that the company's policy was to pay as much or more than competition paid for the same work? [78]

A. That is what he told us.

Q. He explained that?

A. He explained their position.

Q. And did you discuss whether or not the company was doing that?

A. I certainly did.

Q. You disputed that?

A. I certainly did.

Q. And Mr. Huddleston explained that if the company was not doing that, that the wage scales would be changed to meet that policy, did he not?

A. No; I don't recall that. I recall asking if he would pay the same wages as his competitor paid.

Q. Do Sears Roebuck have a mail order house here in Portland?

A. Yes, they have a unit.

Q. Isn't it just a retail store?

A. Yes, but they do quite a bit of parcel post business.

Q. Sears have their mail order house in Seattle, instead of Portland?

A. I understand that they have a larger unit there, yes.

(Testimony of J. W. Estabrook.)

Q. You don't know whether Sears have comparable employees to all the employees of Montgomery Ward & Company in Portland?

A. They have some here.

Q. The bulk of the employees' work, in Sears Roebuck & Company is work done in the retail stores? [79]

A. They have warehousemen that don't get anywhere near the retail store.

Q. But their work is for the retail store?

A. They are working down there across the River, about a mile away.

Trial Examiner Bokat: What was Mr. Huddleston's reply when you asked him if he would pay the same wages as his competitors?

The Witness: We could have signed the contract at that time if he would have complied.

Trial Examiner Bokat: That is hardly the question.

The Witness: Well, he stated that they were paying as high as their competitors, but, of course, we disputed that.

Q. (Mr. Ball, continuing) The fact of the matter is, isn't it, that you were in touch with Mr. Glazier, the representative for the Western Warehousemen, about the Seattle situation, and closed shop there, were you not? A. Yes.

Q. In fact, wasn't there an organization, or a committee, of which you were a member, to handle

(Testimony of J. W. Estabrook.)

the unionization of Montgomery Ward & Company in the 11 western states?

A. I am an officer of the Warehousemen's Council.

Q. This was a specific committee? Isn't that a fact?

A. I believe there was one. I think that happened in Denver.

Q. Now, do you recall who was on that committee, Mr. Estabrook?

A. Mr. White was on it. [80]

Q. Mr. Glazier of Seattle was on it?

A. Yes, sir.

Q. Who else was on it? A. Myself.

Q. There were some others besides that, weren't there? A. Mr. Woxburg of Denver.

Trial Examiner Bokar: Does that have any connection with the issues here?

Mr. Ball: Yes, I think that it does, because they later desired to speak for these organizations, including the organizations in Portland.

Trial Examiner Bokar: All right.

Q. (Mr. Ball, continuing) You had occasion to keep in touch with what Mr. Glazier was doing with Sears Roebuck in Seattle in connection with your dealings with Montgomery Ward here?

A. Yes.

Q. Sometime in November there was a strike at Sears, was there not?

A. I believe there was.

(Testimony of J. W. Estabrook.)

Q. And as a result of that, Sears agreed to a closed shop? A. Correct.

Q. And that strike was called about the time the Christmas business was building up for Sears?

A. I don't know when the Christmas business was building up.

Q. But it was late in November? [81]

Mr. Landye: It seems to me that this is immaterial to the issues in this case. It is very interesting to know what happened at Sears, but I don't think that is pertinent to the issues here.

Trial Examiner Bokat: I think that I know what counsel is driving at. Have you anything to say, Mr. Ball?

Mr. Ball: I have this to say: you will notice in the record there is testimony that Mr. Glazier was present at some of the negotiations involving the Portland situation.

Trial Examiner Bokat: I understand, but an objection has been made to the Sears closed shop discussion and a contract being signed. I assume that your purpose is to show what the Union's idea was with reference to a closed shop for Montgomery Ward?

Mr. Ball: I have a somewhat broader purpose. I propose to show that some of these discussions with Sears were also brought in,—

Trial Examiner Bokat: (Interposing) I will let the answer stand at the present time, but I don't want to get into discussions of the Sears strike, or

(Testimony of J. W. Estabrook.)

what happened at Sears, because it has no relation to the issues in this case.

Q. (Mr. Ball, continuing) You recall that sometime during the last part of November, you and the other members of this committee to organize Montgomery Ward had a meeting in Los Angeles, California? [82]

Mr. Landye: There is no testimony in here that there is any special committee to organize Montgomery Ward & Company. Mr. Estabrook has testified that he is an officer of the Warehousemen of the Western States Council, but that was brought out with regard to a question that was asked him on cross examination by Mr. Ball; but there is no testimony in here except that leading cross examination as to the purpose of the committee.

Trial Examiner Bokat: I will let the question stand as it is, but lay a foundation.

Mr. Ball: May I suggest to the Trial Examiner that the purpose will be apparent, if I am permitted to proceed a little farther,——

Mr. Walker: Let me state, for the purpose of the record, that this testimony should be stricken upon the company's failure to show the relevancy, and I so move.

Trial Examiner Bokat: Well, it will be ignored if it doesn't have any connection, or considered stricken if it has no apparent connection with the issue.

Mr. Landye: May the record show that the

(Testimony of J. W. Estabrook.)

Union's attorney has a running objection to this entire line?

Trial Examiner Bokat: Yes, that may be shown.

Q. (Mr. Ball, continuing) You were aware of the publicity that was given in the *American Labor Citizen*, naming yourself as a member of the committee to organize Montgomery Ward? [83]

A. That is correct.

Mr. Walker: I will object to that upon the ground that it is absolutely immaterial to this issue. Further, I will object on the ground that the answer of the witness can be taken to pass upon the veracity or the accuracy of the statement in the paper. In other words, I have no objection to the answer, if the answer is in regard to the facts. However, here is an article that appears in the paper, and he is asking the witness to construe the accuracy or veracity of the statement contained in the paper, and I don't think that it is proper.

Trial Examiner Bokat: You said "yes"?

The Witness: Yes, my name did appear there.

Q. (By Mr. Ball, continuing) And your committee actually was formed for that purpose?

A. Well, the newspaper exaggerated it, as newspapers usually do.

Trial Examiner Bokat: Was there a special committee formed to organize Montgomery Ward?

The Witness: That is correct.

Q. (Mr. Ball, continuing) In the 11 western states that coincide with the jurisdiction of the Western Warehouse Council? A. Yes.

(Testimony of J. W. Estabrook.)

Q. And Mr. White, who was the spokesman for that committee in the meeting of November 25,—

A. Yes, he was the spokesman. [84]

Q. Mr. White was the spokesman for that committee in the meeting of November 25 at Oakland, California, you say? A. Yes.

Q. And Mr. White professed to be speaking on behalf of your Local and your organization, as well as the other members of this council in the meeting that was held on November 25?

A. No, I wouldn't say that.

Q. He did make that claim at the meeting?

A. He claimed that he was speaking for and on behalf of the Western Warehouse Council.

Q. And also stated that that included all the Locals in its jurisdiction?

A. Well, of course, those units would be included in it.

Q. And this was essentially the same committee that had been organized to bring about the unionization of Montgomery Ward? A. Yes.

Q. And he did profess to speak not only for your Local here in Portland, but for the Retail Clerks' Local and for the Office Workers' Local here in Portland?

A. I will have to answer that "yes", but not Mr. White. The Retail Clerks had three men in that meeting representing them.

Q. But it was a joint committee action?

(Testimony of J. W. Estabrook.)

A. It was a joint committee of A. F. of L. representatives, yes.

Q. Isn't it true that towards the end of November there was a [85] meeting of this committee in Los Angeles, California?

A. No, that is not true. I would like to explain that to you, that there was a meeting, but not that committee.

Q. There was a meeting as to which your activities, or in which your activities in Portland in submitting contracts to Montgomery Ward and the general situation with regard to Montgomery Ward was discussed?

A. Yes.

Q. And who was present at that meeting? Do you recall?

A. I do not. I could furnish you with a list. There was at least 75 people who were present; perhaps a hundred.

Q. Mr. Beck was present at that meeting?

A. Yes, sir.

Q. And publicity followed that meeting in the papers to the effect that a decision had been made to take economic action against Montgomery Ward & Company in the 11 Western States unless they signed up with the union?

Mr. Landye: May I have a running objection to this testimony. It is absolutely immaterial and has nothing to do with the issues here. This issue merely is concerned with the relationship between Montgomery Ward & Company and the union.

(Testimony of J. W. Estabrook.)

Now, what has gone on in an A F of L convention can have no bearing here.

Trial Examiner Bokar: The complaint alleges that the strike was called because of respondent's refusal to bargain [86] collectively. If it is a fact that it was called for some other reason, I don't know. I take it that it is subject to connection. The connection may be obvious,—I don't know. It is something that I will have to take, subject to a motion to strike, if it is not connected up.

Will you read the question, Mr. Reporter?

(Thereupon the last question was read aloud by the reporter as above recorded.)

Q. (Mr. Ball, continuing) Is that true?

A. Do you want me to answer it?

Trial Examiner Bokar: Go ahead.

A. Yes.

Q. (Mr. Ball, continuing) And did the publicity in the American Labor Citizen, and other labor papers, substantially describe what took place at that meeting in Los Angeles?

A. I believe it did.

Q. Now, at that meeting in Los Angeles,—

Trial Examiner Bokar: You have raised a question, unless they signed up with the union; by "they", do you mean Montgomery Ward & Company?

Mr. Ball: Yes, unless Montgomery Ward signed up with the Union.

(Testimony of J. W. Estabrook.)

Trial Examiner Bokat: I just wanted to make that clear.

(Whereupon a document was marked as Respondent's Exhibit No. 1 for identification.)

[87]

Q. (Mr. Ball, continuing) I hand you what the reporter had marked as Respondent's Exhibit No. 1. I will ask you if you recognize what it is?

Mr. Landye: At this time, although it has not been offered in evidence, before any questions are asked by way of identification, I want to register my objection. I have seen the practice in many of these Board cases where such matter has come in through the back door, by being identified and described and testified concerning before any offer has been made.

Trial Examiner Bokat: I think you realize that the objection is premature.

Mr. Landye: Yes, but I have had some experience in these cases, where the evidence has come in through the back door, before the document has been offered.

Mr. Ball: Will you read the last question, please, Mr. Reporter?

(Thereupon the last question was read aloud by the reporter as above recorded.)

Trial Examiner Bokat: You may answer that question.

(Testimony of J. W. Estabrook.)

A. I don't see my name there.

Trial Examiner Bokar: Will you read the question back again? That is not the question.

(Thereupon the last question was again read by the reporter as above recorded.)

A. Yes. [88]

Q. (By Mr. Ball, continuing) Have you ever seen a copy of that before? A. Yes.

Q. Will you describe for the record just what it is?

A. That is a labor paper published in San Francisco. It is known as the Official Western Publication of the American Federation of Labor.

Q. Have you read the story that appeared in that paper about the concerted action against Montgomery Ward in the 11 Western States?

A. No.

Q. You didn't read it at the time that it appeared? A. No.

Mr. Ball: Will you mark this as an exhibit, Mr. Reporter?

(Whereupon the document hereinabove referred to was marked as Respondent's Exhibit No. 2 for identification.)

Q. (Mr. Ball, continuing) I hand you what the Reporter has marked as Respondent's Exhibit No. 2, and ask you if you know what that is?

A. Yes, that is another copy of the American Labor Citizen.

(Testimony of J. W. Estabrook.)

Q. As of what date? A. November 22.

Q. And Respondent's Exhibit No. 1 was a copy of the same paper for what date?

A. November 29. [89]

Q. I ask you if you have ever seen this particular paper before? A. This one, yes.

Trial Examiner Bokat: Referring to Respondent's Exhibit No. 2.

Q. (Mr. Ball, continuing) You do find your name in that particular article? A. Yes.

Q. And that article does actually describe the formation of this committee exactly?

A. I would like to read it to make sure.

Trial Examiner Bokat: You may have all the time that you want?

The Witness: That is it.

Trial Examiner Bokat: Now, listen to the question.

The Witness: I answered the question, Mr. Examiner. He asked me if it described the formation of this committee, and I said that it did.

Q. (Mr. Ball, continuing) Now, subsequent to November 22, when Respondent's Exhibit No. 2 was circulated, and November 29, when Respondent's Exhibit No. 1 was circulated, this meeting took place at Los Angeles of this committee?

A. Yes.

Q. And at that time, in connection with the subject matter of presenting demands to Montgomery

(Testimony of J. W. Estabrook.)

Ward & Company, the Sears Roebuck [90] closed shop contract at Seattle was discussed, was it not?

A. I have no recollection of that being discussed.

Q. But you were aware of it at that time, that Sears had such a contract at St. Paul?

A. At Seattle.

Q. At Seattle? A. Yes.

Q. And I submit to you that it is a fact, is it not, Mr. Estabrook, that the fact that Sears had made such a contract was considered in the formulation of the policies of this committee at Los Angeles? A. No, sir.

Q. Now, when the meeting of November 25 was held, do you remember who was present?

A. I remember most of our people. The only man that I can recall his name, was Mr. Powell; however, there were other representatives of the company there.

Q. Do you recall Mr. P. W. Harris, vice-president of Montgomery Ward & Company, being present?

A. Yes, I remember that his name was mentioned.

Trial Examiner Bokar: I note that the representatives of the Company and the Union have been checking the payroll. For the record, I will state that in an off-the-record discussion the parties had agreed that a check be made of the designation of the various employees and the membership cards

(Testimony of J. W. Estabrook.)
of the Retail [91] Clerks from the payroll furnished by the respondent. Now, I understand that a check has been made, so I will declare a recess of ten minutes at this time, in order that the parties may discuss it.

(Whereupon at this time a short recess was taken after which proceedings were resumed as follows:)

Trial Examiner Bokat: Proceed.

Q. (Mr. Ball, continuing) Mr. Estabrook, that Sears' strike which lasted a day at Seattle, occurred November 19, did it not? A. I don't know.

Q. Is that substantially the approximate date?

A. I don't know the approximate date. I know that they had a strike.

Q. That was prior to November 25 and prior to the meeting at Los Angeles?

A. I would have to check my records.

Q. Maybe I can refresh your recollection.

A. I will accept the newspaper clipping, or anything like that.

Trial Examiner Bokat: I don't know how important this is going to be.

Mr. Ball: Well, can we pass that for the time being?

Trial Examiner Bokat: Yes.

Q. (Mr. Ball:) I have a newspaper clipping somewhere on that. Now, to return to this meeting of November 25 in Oakland, Calif- [92] ornia. Do

(Testimony of J. W. Estabrook.)

you recall this meeting being held in one of the company offices? Or do you recall where it was held?

A. It was held in the Montgomery Ward building in Oakland.

Q. You don't recall the names of the representatives of the various labor unions who were present at that meeting?

A. Almost all of them. There were some representatives from some of the smaller locals around the Bay Area. I know them by sight, but I don't know their names.

Q. Now, at that time, the Portland contract was not the only one of which a copy was present at the meeting? A. No.

Q. There was a copy of the contract of the Retail Clerks at Oakland; isn't that a fact?

A. There were various contracts.

Q. There was an open shop contract clause in the contract that was submitted at Oakland, California?

Mr. Landye: The same objection. Just what materiality it may have, I am at a little bit of a loss to know, and I therefore want to object.

Trial Examiner Bokar: I would like to have the record show whether it is a fact whether there was a general discussion concerning proposed contracts not only with the Portland division, but with other divisions of the company. This witness has related a general conversation that took place, which, I

(Testimony of J. W. Estabrook.)

assume, not only affected the Portland store, but other stores of the [93] company as well; is that correct?

The Witness: Yes.

Q. (Mr. Ball, continuing) Do you recall that some discussion at that time took place with regard to the closed shop clause in that contract that I just referred to? A. Yes.

Q. And Mr. White had that contract and asked to have the company's acceptance of that closed shop contract? A. That is right.

Q. There was some discussion about some Retail Clerk's Union having made a general rule at some convention of theirs that all of their contracts had to contain a closed shop clause?

A. I don't remember what the Retail Clerks said on that particular question.

Q. But there may have been a discussion of that kind at that time?

Mr. Landye: All through the hearing here, counsel has asked questions of that kind which may leave an inference to the mind of the reader, or leave the impression that certain things did happen, although the witness has not testified to them.

It seems to me that that is highly improper, and that the witness should only testify as to the things that he knows something about, and counsel not put in his mouth the statement [94] that possibly something may have happened, leaving the inference that it did happen. I think that it is highly improper,

(Testimony of J. W. Estabrook.)

and when a man says he doesn't know, that should be the end of it, according to the rules of evidence.

Trial Examiner Bokar: If the witness states that it might have happened, and then we have some affirmative proof that it did happen, of course, any statement on the part of the witness would be of no value whatsoever. I don't want to be technical. If it might have happened, I am interested in knowing. However, I will let it stand as some indication, although it doesn't have any weight as positive testimony.

Let's proceed.

Mr. Ball: I think that there was a question unanswered?

Trial Examiner Bokar: Will you read it, Mr. Reporter?

(Thereupon the pending question was read aloud by the reporter as above recorded.)

A. I don't know.

Q. There was considerable discussion at that meeting, was there not, with respect to a closed shop clause or a union shop clause, or variations of union preference clauses?

A. There wasn't any more discussion on that than there was on any other part of the contract. There was some discussion on it, yes.

Q. Do you recall that when this meeting started, Mr. White opened the discussion of the meeting of November 25 by saying [95] that this committee

(Testimony of J. W. Estabrook.)

represented the Warehousemen's Union and Retail Clerk's Union in the 11 Western States?

A. Yes.

Q. And he mentioned that they had been trying to organize Montgomery Ward in many localities?

A. Yes.

Q. And that he was discussing the entire situation relating to these localities?

A. That is correct.

Q. And that the meeting involved the situation in Portland, and that he was acting as spokesman for a committee with relation to the Portland contract as well as to other matters?

A. I believe that is correct.

Q. Do you recall that he made some statement in which he asked some general questions about the company's policy about the union shop or closed shop?

A. I couldn't answer that yes or no.

Q. Well, now, in the course of this meeting several times Mr. White threatened economic action against Montgomery Ward & Company if certain things were not done, did he not?

Mr. Walker: I will object to that as calling for a conclusion of the witness.

A. I don't recall any such statement.

Q. You recall that Mr. White talked about the closed shop clause of the Retail Clerk's contract which had five subdivisions [96] Subdivision A, B, C, D, and E, in it, and that he asked about, generally, all of the five subdivisions of the closed

(Testimony of J. W. Estabrook.)

shop clause? A. No, I don't remember that.

Q. That meeting lasted quite a while, did it not?

A. Yes, it did.

Q. And there were lots of discussions that you have not presented, which went on in that discussion?

A. Yes; that is right; there are some that I don't recollect, if they took place at that time.

Q. There are some, doubtless, that took place that you do not recall?

A. There is one that I testified to that is outstanding in my memory.

Q. You don't mean to represent to the Board, naturally, that you have testified to everything that occurred?

A. No, and you haven't asked me that.

Q. I will grant that.

A. I will answer any question that you ask me, that I can remember.

Q. I believe that. But, in so far as the questions that have been asked so far, they have not covered everything that was said, but only what you can recall? A. Yes.

Q. And you have not covered everything that may have been said [97] at the meeting of November 25? A. That could be very possible.

Q. Now, during this meeting at Los Angeles, do you recall exactly the date that it took place?

A. Not the exact date.

(Testimony of J. W. Estabrook.)

Q. Have you any records in your files that would indicate the date?

A. Yes, I have the exact date.

Q. And will you be prepared tomorrow to testify what the dates would be?

A. The reason that I wouldn't be able to give you the date was because the meeting lasted a week, and it covered a lot of things besides Montgomery Ward & Company.

Q. In the course of the meeting at Los Angeles, the question of whether or not the Teamsters generally in the 11 Western States would support the economic action against Montgomery Ward & Company was discussed, was it not?

A. Yes, it was discussed; it is a known fact that they would.

Q. In fact, it was more or less the decision of the meeting that they would get the support in case of economic action against Montgomery Ward, of the Teamsters?

A. Yes, that is right.

Q. Do you recall what date it was that Montgomery Ward's Oakland house was struck?

A. Not without referring to my file. [98]

Q. If I mentioned December 4,—

A. ,—I would say that you were right.

Q. And you doubtless learned, or had calls from Mr. White over the telephone about this time concerning the action taken at Oakland?

A. I read the newspapers.

(Testimony of J. W. Estabrook.)

Q. And Mr. White continued to represent your Local here in the negotiations which continued and were conducted in Oakland? A. Yes, he did.

Q. And you were informed, were you not, that there was a meeting in Oakland on December 6, at which Mr. White made promises that no action would be taken at Portland until further discussions were had at Oakland?

A. No; I don't recall any such statement as that.

Q. Didn't Mr. White call you and give you that information?

A. Mr. White called me and gave me some information, but it was not anything like that.

Q. Then Mr. White neglected to pass that on to you?

A. No information like that was given to me.

Q. Now, who did call the strike in Portland? Wasn't it the Retail Clerks who called the strike?

A. We all called the strike.

Q. Didn't you say to Mr. Brown on April 4, that you came into the strike to support the action of the Clerks?

A. The Clerks originally called the strike. [99]

Q. Your union didn't call the strike except to support the action taken by the Retail Clerks?

A. That is right.

Q. And you did call it to support the action taken by the Retail Clerks?

A. Well, not exactly, no.

Q. But you made that statement to Mr. Brown?

(Testimony of J. W. Estabrook.)

A. Not in just that many words. Their organization met ahead of ours, and they took strike action first; that is about all that it amounted to. We took strike action within the following 24 hours.

Q. Isn't it a fact that the explanation for the strike occurring at Portland on the 7th, instead of waiting for a meeting to be held in Oakland on the 7th, was because the Retail Clerks had called the strike, and they were not under Mr. White's jurisdiction?

A. I don't know what Mr. White told you.

Q. If Mr. White made such a statement, was he correct or not? A. He was correct.

Q. Didn't Mr. White at a meeting on November 25 state that he and the others present for the Union were speaking for the Retail Clerks' Union here?

A. The only person who made that statement was Mr. Nathan, their International Representative.

Q. That followed Mr. White's statement that they were representing [100] all of the Retail Clerks as the result of the meeting of the Western Warehouse Council?

A. Mr. White acted as spokesman for the Western Warehouse Council.

Q. Mr. White spoke for the committee?

A. No. Mr. Nathan spoke for the International Clerks' Association.

(Testimony of J. W. Estabrook.)

Q. If Mr. White did say at any time that he was speaking for the entire committee as sole negotiator, that is not the fact?

Mr. Walker: I will object to that as assuming facts not in evidence.

Mr. Ball: It will be shown.

Trial Examiner Bokat: I will sustain the objection.

Mr. Ball: I may have that reconsidered if I show the necessary basic facts?

Trial Examiner Bokat: Oh, yes.

Mr. Ball: Without the necessity of recalling Mr. Estabrook?

Trial Examiner Bokat: Yes.

Mr. Ball: I would like to have the record show that I will have the opportunity to put that in without the necessity of recalling Mr. Estabrook.

Will you read the last question, please?

(Thereupon the question referred to was read aloud by the reporter as follows: [101])

“Q. If Mr. White did say at any time that he was speaking for the entire committee as sole negotiator, that is not the fact?”)

A. That is not the fact.

Q. (Mr. Ball, continuing) You and Mr. White had some discussion, did you not, over the phone or otherwise, about whether to handle this matter jointly, sometime subsequent to the time you called the strike, or whether to handle it otherwise?

Mr. Landye: What does he mean when he says

(Testimony of J. W. Estabrook.)

“jointly”; does he mean jointly between the Warehousemen in Portland and the Warehousemen in Oakland, or jointly between the various unions, the Warehousemen, the Clerks and Office Workers?

Q. (Mr. Ball, continuing) Let me ask you this: Mr. White did make reference, to your knowledge, did he not, that he desired to have the negotiations for both Portland and Oakland centered at Oakland?

A. No, he did not. I made that statement.

Q. That you desired to have them centered at Oakland?

A. Yes.

Q. Under Mr. White's hands?

A. No, sir. I would like to explain that.

Q. Go ahead.

A. Mr. White and myself are the two chief officers of the Western Warehouse Council. If a controversy should arise regarding Montgomery-Ward, or Safeway Stores, or whoever the [102] case might be, and their main office was in Oakland or San Francisco,—that is, with their headquarters in San Francisco or Oakland, or their labor relations officers were there, or the men to conduct the negotiations were there, I would go there to represent the Local myself, or, if it was impossible to get away, I would ask Mr. White to do it for me. Then, vice versa, if Portland was the main office, and the same situation existed, that Mr. White couldn't come to Portland, he would ask me.

Q. Mr. White has in times past represented your

(Testimony of J. W. Estabrook.)

Local here in negotiations with companies whose headquarters or whose responsible officers for such problems are centered in California? A. Yes.

Q. What is the Western Warehouse Council?

A. The Western Warehouse Council is an organization created within the International Brotherhood of Teamsters having to do strictly with warehouse unions. Our office of the Western Warehouse Council is in San Francisco.

This Council functions throughout the 11 western states, through Mr. White's office, because he is secretary, and we meet there once a month to discuss ways and means of handling our problems.

Q. What is the Highway Drivers' Council?

A. That is another organization created within the International Brotherhood of Teamsters, dealing solely with over-the-road [103] operations in the United States.

Q. If either of those organizations,—have either of those organizations ever been selected by the employees of Montgomery Ward & Company to represent them for collective bargaining purposes?

A. Yes.

Q. How was the selection made?

A. The people that are under our jurisdiction in Portland have been told many times of our Western Warehouse functions, and how they work; and they have always voiced their approval of those matters.

(Testimony of J. W. Estabrook.)

Mr. Landye: Are you going to offer Respondent's Exhibits 1 and 2?

Mr. Ball: Yes.

Trial Examiner Bokat: Are you going to do that now?

Mr. Ball: I thought I would cross examine the witness first.

Trial Examiner Bokat: In some jurisdictions, they limit the offer of exhibits through their own witnesses. You can do it any time that you want, provided you have laid the proper foundation and the materiality and competency is shown.

(Thereupon a document was marked as Respondent's Exhibit No. 3 for identification.)

Mr. Landye: That is not permitted in the Local Rules.

Trial Examiner Bokat: I will do it, if counsel prefers to do it that way. [104]

Q. (Mr. Ball, continuing) I hand you what the reporter has marked as Respondent's Exhibit 3, and I will ask you if you know what that is?

Mr. Landye: Does counsel have any objection to my looking at it?

Mr. Ball: Certainly not.

A. Yes.

Q. (Mr. Ball, continuing) Will you tell the Examiner what it is?

A. This is a request from the secretary of our Western Warehouse Council, Mr. White, asking

(Testimony of J. W. Estabrook.)

Montgomery Ward & Company what they intend to do about meeting with our local organization as to negotiations, how they are going to take place, and when, and so forth, and telling them that it should be done by a certain time.

Q. You recognize Mr. White's signature to that letter, do you not? A. Oh, yes.

Q. And you knew that that letter was written at that time?

A. We instructed him to.

Q. The "we" being the committee that we have spoken of before? A. That is correct.

Trial Examiner Bokat: The Warehousemen's Committee?

The Witness: That is correct.

Q. (Mr. Ball, continuing) Now, turning to the meeting of [105] December 13 in Portland, let me ask you whether or not prior to that time you had or had not withdrawn authority from Mr. White to speak for the Portland Local at Oakland.

A. I don't know that there was any authority to withdraw. I don't understand the question at all.

Q. Had you at any time notified Mr. White in any negotiations he might be conducting at Oakland, that he was not to speak for the Portland Local?

A. No. Nobody ever gave him any instructions like that.

Q. Do you recall that at that meeting of December 13, Mr. Brady was present?

(Testimony of J. W. Estabrook.)

A. Yes, he was.

Q. You recall also that the first remarks made at that meeting were made by Mr. Brady, were they not? A. I don't know exactly.

Q. On behalf of the Central Labor Council?

A. He spoke on behalf of the Central Labor Council, yes.

Q. And then you stated, did you not, that your union, and all the unions present at that meeting, were particularly concerned with the matter of recognition?

A. No, I don't think that I made that statement.

Q. Did you at any time discuss whether your union had been recognized?

A. Yes. I had discussed that.

Q. And Mr. Powell at that meeting stated,——
[106]

A. (Interposing) Mr. Powell stated at that time and at any other time that he did recognize the union.

Q. Just a minute. Mr. Powell stated at that time that he would recognize your union in accordance with the certification of the National Labor Relations Board?

A. That is right. And I also asked him about the Clerks.

Q. What was the reply about the Clerks?

A. That they had written a letter admitting that the Clerks had a majority of the people.

Q. A majority of the employees? A. Yes.

(Testimony of J. W. Estabrook.)

Q. You say that he had written a letter to the Clerks? A. Yes.

Q. Do you know where it is?

A. No, but I imagine that Mr. Dixon has it.

Mr. Ball: Mr. Dixon, do you have such a letter?

Mr. Dixon: From the company stating——

Mr. Landye: Just a moment. Is he going to examine everybody in the court room?

Trial Examiner Bokat: Off the record.

(Discussion off the record.)

(Thereupon a document was marked as Respondent's Exhibit No. 4 for identification.)

Q. (Mr. Ball, continuing) I hand you what the reporter has marked as Respondent's Exhibit No. 4, and ask you if that [107] is not the letter that you mentioned as being written by the company to the Retail Clerks, to which you have just made reference? A. I believe it is.

Trial Examiner Bokat: The only difficulty we have with reference to offering exhibits in bulk is that it is hard to recall the ones on which proper foundations have been laid. For instance, as to Respondent's Exhibit No. 1, a proper foundation has not been laid, as the witness said that he had never read it, although he stated that he had seen it. When several exhibits are offered at one time, that is the difficulty that we run into.

Mr. Ball: I would be happy to offer at this time Respondent's Exhibits, 1, 2 and 3.

(Testimony of J. W. Estabrook.)

Mr. Walker: I object to the offer of Respondent's Exhibits 1 and 2 upon the ground that the respondent has not properly identified them. It lacks sufficient foundation to establish materiality or relevancy; and I also object on the ground that the contents of the article are incompetent, irrelevant and immaterial. That objection runs to respondent's Exhibit No. 1.

As to Respondent's Exhibit No. 2, I object to it on the ground that it is incompetent, irrelevant and immaterial.

Mr. Landye: I object to Respondent's Exhibits 1 and 2 on the ground that they are not the best evidence. They are merely newspaper items that are put in while the witness is on the stand, [108] and it is clearly beyond the best evidence rule. It is attempting to put in secondary evidence, gathered by a newspaper reporter, and I suggest that they ask the witness.

Mr. Ball: May I call the Examiner's attention to the fact that counsel for the union is simply reiterating or reinforcing the objections made by counsel for the Board; in other words, his objections are supplemental to the objections made by counsel for the Board. That goes to the matter of being subjected to a double-barreled prosecution, which, I submit, is a violation of orderly procedure.

Trial Examiner Bokat: If I recall the testimony of the witness correctly, I believe that a proper foundation has been laid with reference to Respon-

(Testimony of J. W. Estabrook.)

dent's Exhibit 2. Of course, the witness stated that what was contained in that particular article took place. I don't know what particular part of Respondent's Exhibit No. 2 you are offering. There are approximately six pages in the issue of the paper. Just what are you offering? Let us take one at a time. Referring to Respondent's Exhibit No. 2, what do you offer? Do you offer the entire paper, or a part of it?

Mr. Ball: I offer the entire paper, but if that is not admitted, then alternatively, I offer that portion on the first page which contains the *headling*, seven columns wide, together with the article relating to that headline on the first page, and wherever it appears on subsequent pages. [109]

The *headling* that I refer to is "A F of L ready to move on Montgomery-Ward."

I am offering that, and the article which follows that, and, also, the advertisement which appears separately, on page 4, addressed to "Every member and friend of organized labor in the 11 Western States".

Trial Examiner Bokar: I will rule first on the general offer, and I will reject the general offer of the entire newspaper. As to your alternative offer, in regard to the specific article offered, I believe that the witness testified that that meeting took place as set forth in that particular article. Is that correct?

(Testimony of J. W. Estabrook.)

The Witness: Yes, but the only thing is, Mr. Examiner, that the man that reported this didn't put it all in. He may have put too much in there, or he may not have put enough in there. I can't say that it is exactly what took place.

Trial Examiner Bokar: Is it substantially an accurate reflection of what took place at the meeting?

The Witness: Substantially, no.

Mr. Ball: I will object to that. The witness is changing his testimony.

The Witness: That is a part of what took place; this meeting was over a period of a week.

Trial Examiner Bokar: Does what is set forth here represent a part of what took place in an accurate way? [110]

The Witness: A part.

Trial Examiner Bokar: Is that correctly set forth?

The Witness: Fairly accurate.

Trial Examiner Bokar: What is the purpose of the offer?

Mr. Ball: Without exhibiting the purpose of the offer,—

Trial Examiner Bokar: Of course, without your statement, I am at a loss to know. However,—

Mr. Ball: (Interposing) It is offered for the following reasons: first,—and let these reasons apply to both the general offer and the offer of the specific portion,—that it has been shown that Mr. Esta-

(Testimony of J. W. Estabrook.)

brook is perfectly familiar with the fact that this was printed and caused to be read by the general public, and published and circulated by the American Labor Citizen, and that the said statement is correct.

The Witness: So far as the publishing of it, yes.

Mr. Ball: And this states facts which were made known to this respondent, matters more or less of common knowledge, which were known to this respondent prior to some of the meetings which were taking place, and they have a bearing upon the subject matter to be discussed and the contents and course of these collective bargaining sessions; third, that the events set forth in this newspaper, and the fact that the newspaper itself was circulated, bear directly upon the allegation that this strike was due to unfair labor practices, namely, the failure to bargain with the union represented by Mr. Estabrook. [111]

I will reserve the right to state further reasons later.

Trial Examiner Bokar: I will receive it in evidence. I frankly don't know what is going to develop yet. It may have some relevancy, and again, it may not.

(Whereupon the document heretofore marked as Respondent's Exhibit 2 for identification, was received in evidence.)

(Testimony of J. W. Estabrook.)

RESPONDENT'S EXHIBIT No. 2

American Labor Citizen

San Francisco, Friday, November 22, 1940

AFL Ready to Move On Montgomery Ward

Concerted Action

Being Formulated

In Entire West.

Teamsters, Warehousemen,

Clerks, Engineers And

Machinists To

Coordinate Efforts Against

Labor-Resisting Company.

Economic Action in

11 Western States to Start

As All Union Members Urged

To Discontinue Patronage.

(See page four)

San Francisco.—Continual stalling and a series of conferences that plainly indicate a definite anti-labor policy on the part of Montgomery Ward, national chain store company, together with active anti-labor effort of the company in most of its operations in the West, is about to bring economic action of coordinated AFL effort against the company in the 11 western states.

A committee representing AFL units concerned with store operation has been formed. This committee, at present fruitlessly attempting a solution

(Testimony of J. W. Estabrook.)

of the many and various problems instituted against labor by the hedging company, is formulating plans for united action in all points in the West in which the company operates. The committee represents the teamsters, warehousemen and retail clerks and has the active support of the engineers and machinists and western AFL office.

Committee Personnel

Personnel of the committee includes Joseph M. Casey, international teamster representative; T. A. White, secretary of the Western Warehouse Council; Russell Nathan, international representative of the retail clerks; George Towers, secretary of Warehousemen's Local 853 of Alameda County; Jack Esterbrook, secretary of Warehousemen's Local 206 of Portland, Oregon; Fred Dixon, secretary of Retail Clerks Local 1257 of Portland, Oregon; William Wood, president and business representative of Retail Clerks Local 47 of Oakland, California, and B. I. Bowen, secretary of the Seattle Joint Council of Teamsters.

The committee, representing as it does the entire teamster and clerk effort in the West, is indicative of the seriousness of this Montgomery Ward affair. The committee is authorized to act by the various internationals and a drastic program is being formulated to advise the company through economic action that the anti-labor merry-go-round idea that the company has established in its labor relation

(Testimony of J. W. Estabrook.)

policy has come to a stop and that the merry-go-round has broken down.

Every Point

During the past six months reports have been coming into the western office of AFL of anti-union pressure and practices of Montgomery Ward from practically every point of operation in the West. A company union in the Fresno, California, store; a seven months' picket line on the store at Pittsburg in California. Refusal to talk in Oakland, California, and in Portland, Oregon, where both the warehousemen and the clerks show a majority of employees. Subtle coercion of employees at Redding, Santa Rosa and Petaluma; trouble in Modesto and discouragement of unionization at Los Angeles, Marysville and many other California operations. Denver, Colorado, Nampa, Idaho, Tacoma, Washington, and other points in the West report difficulty in organizational effort with this company.

The meetings with the company in the West have been held with William Powell, their labor relations employee, who by his conciliatory delay tactics has given direct evidence that either he has no power to act for the company or that the policy of the company is being followed parrot-like by Powell.

(Testimony of J. W. Estabrook.)

To Every Member and Friend of Organized Labor
in the Eleven Western States!

For the Preservation of the Very Principles and
and Ideals of Organized Labor, It Is Important
That You

Do Not Patronize

Montgomery Ward

This National Chain Store Company Is Combating
Legitimate Organization in Practically Every
One of Its Operations in the Entire West.

They refuse to recognize majorities of clerks or
warehousemen.

They refuse to seriously discuss these majorities
and decently negotiate with union officials.

They are sanctioning "company unions" in many
points of operation.

They discourage unionization among their em-
ployes.

They refuse to sign unionized contracts.

They refuse to officially notify their employes
that they may join a union if they wish to.

Their entire labor relations policy is one of con-
ciliatory delay, thereby giving positive evidence
that they do not want unionization.

They handle nationally boycotted unfair merchan-
dise, despite the fact that they have been repeatedly
requested to cooperate with union workers who
make up the bulk of their customers.

(Testimony of J. W. Estabrook.)

AFL warehousemen, teamsters, retail clerks, engineers and machinists are about to take action against this labor-biased unfair firm throughout its entire operation in the eleven western states.

Nearly every point of operation in the territory reports difficulty with this concern. Reports of this nature are at hand from Portland, Oregon; Tacoma, Washington; Los Angeles, Oakland, Fresno, Modesto, Redding, Santa Rosa, Petaluma, Marysville, Pittsburg and other California cities; from Denver, Colorado; from Nampa, Idaho, and elsewhere.

In Justice to Your Fellow Workers and for the
Preservation of Your Own Union Principles you
Must Not Patronize This Unfair Firm!

Trial Examiner Bokat: Now, as to the advertisement which you offer, I am trying to determine its relevancy.

Mr. Ball: May I call the Examiner's attention to the fact that Mr. Estabrook stated that he knew it was circulated.

Mr. Walker: No, he said he knew that it was published.

Trial Examiner Bokat: I will accept the advertisement. I will overrule the objection. Respondent's Exhibit No. 2 will be received, only in so far as it contains the article appearing under the title "A F of L ready to move on Montgomery Ward"

(Testimony of J. W. Estabrook.)

and the advertisement that appeared in the newspaper to which reference has been made.

Now, with regard to Respondent's Exhibit No. 1?

Mr. Ball: May I have the privilege of asking a few additional questions?

Trial Examiner Bokat: I think that you had better.

Q. (Mr. Ball, continuing) Calling your attention to the headline of the particular article, "Deadline today."

A. Where does it say "Deadline today"? [112]

Q. Does that, as a matter of fact, refer to a deadline on that date?

A. Not so far as I am concerned. How could it be the deadline when the strike was not called until the 4th of December?

Trial Examiner Bokat: I am sure I don't know.

The Witness: Neither do I.

Q. (Mr. Ball, continuing) Do you know what is meant by the statement "Deadline today"?

A. I am sure I don't know.

Q. So far as you are concerned, the fact that there was a deadline set is not correct?

A. Not so far as I am concerned, in connection with the newspaper.

Q. What about the statement in the paper, "Teamster and Clerk Units in Northern California have already moved against the company at Redding, Denver, Colorado, Portland, Oregon, and other points in the West are poised and ready to act against the company". Is that true?

(Testimony of J. W. Estabrook.)

Mr. Landye: This is exactly what I had in mind when I objected to these exhibits being identified, and then testimony being taken on them or concerning them without being offered in evidence. It is simply throwing the exhibits in through the back door, and much of the matter is brought into the record without following the proper legal procedure. I think that it is time that some sort of procedure be established. That is [13] not a fair way to do it.

Mr. Ball: May I suggest again, on the matter of elements of fair procedure, that two parties objecting at once,——

Trial Examiner Bokat: (Interposing) I will make it clear that so far as union counsel is concerned, he has a right to participate in the proceeding; and, so far as the objection of union counsel is concerned, I think that the objection is a good one.

Mr. Ball: Do I understand that the objections of the Union are not the objections of the Board?

Trial Examiner Bokat: Absolutely. The Union has a separate status in this proceeding. Counsel for the union has a right to object for and on behalf of the Union, but not for the Board.

I am only accepting his objection on behalf of the Union.

Mr. Ball: Then, notwithstanding his objection, this exhibit remains,——

Trial Examiner Bokat: I have not ruled on Respondent's Exhibit No. 1.

(Testimony of J. W. Estabrook.)

Mr. Walker: Furthermore, if they are not in evidence, they are not in evidence.

Trial Examiner Bokat: We will come to that point. I think that the objection is correct. I want to get at the fact. I don't know whether that is going to have any bearing on the case. If it is going to be helpful, I want to let it in.

Mr. Ball: Off the record? [114]

Trial Examiner Bokat: Off the record.

(Discussion off the record)

Mr. Ball: I have withdrawn the previous question.

Trial Examiner Bokat: All right, put the next question to the witness.

Q. (Mr. Ball, continuing) Calling your attention, Mr. Estabrook, to the fourth paragraph in Respondent's Exhibit No. 1, relating to Montgomery Ward & Company, I will ask you whether the paragraph there set forth is substantially correct?

A. No, it is not; it is very misleading; it certainly is not in there right. The editor of this paper printed the article, and when he did it, he put it in as a misleading article; that is, it is misleading and does not tell the facts.

Q. Then would you say that Montgomery Ward & Company, reading this, assuming that it was a reputable publication, believing this, had received an erroneous impression?

Mr. Walker: I will object to that as calling upon the witness to pass upon the truth and accuracy of

(Testimony of J. W. Estabrook.)

the article; and, secondly, to call upon the witness to determine what is going on in the minds of other people.

Trial Examiner Bokat: Yes, it is purely conjectural. I will have to sustain the objection to the question in that form.

Mr. Ball: I will let the record stand on that one.

Trial Examiner Bokat: All right. If it is the respondent's position, Mr. Ball, that the Company, because of these newspaper [115] articles, adopted a certain attitude, or were led to believe certain things, of course, that would be an element of defense. You have not stated the position of the respondent. I don't know what the position of the respondent is.

Mr. Ball: May I state this to the Examiner: that in the trial of any lawsuit it is necessarily true, in the examination of one witness there is not before the Examiner and before Counsel all of the record that will be brought out in the examination of others, but in an orderly procedure, it seems to me that facts that should be brought out in the case, which pertain to relevant matters, should be permitted, so that counsel could develop his story in an orderly way.

Trial Examiner Bokat: I don't intend to limit you unfairly. I merely want to understand your position, and what you are getting at. If I see your point clearly, I am going to permit you to go ahead. I don't want at any time to appear to be arbitrary.

(Testimony of J. W. Estabrook.)

I am here to protect the rights of everybody, and I want to get the facts fairly and squarely. That is my position.

Mr. Ball: We all concur in that. Do I understand that the exhibit is excluded both as to the specific article and as to the entire paper?

Trial Examiner Bokar: I have not ruled on it yet.

Mr. Ball: I offer the paper for what it states, and also the article specifically mentioning the respondents in that paper.

Mr. Walker: I renew my objection. [116]

Mr. Landye: Counsel for the Union object to the paper on the same grounds that they objected before, and, for the further reason that the best evidence of the meetings, if they can be secured, would be the minutes.

Trial Examiner Bokar: I am afraid that I will have to sustain the objection, without reading it, because the witness has testified that it does not fairly reflect what took place at that meeting. Am I correct?

The Witness: That is correct.

Trial Examiner Bokar: Inasmuch as he made that statement, I don't see how I can possibly accept that article. You may, Mr. Ball, want to withdraw the offer.

Mr. Ball: I shall probably renew it; I don't wish to withdraw it.

Trial Examiner Bokar: I mean, at this time.

(Testimony of J. W. Estabrook.)

I will refuse respondent's exhibit No. 1, and ask that the reporter mark it as a rejected exhibit.

Is there any objection to Respondent's Exhibit No. 3?

Mr. Walker: No objection.

Trial Examiner Bokat: It will be received and marked in evidence as Respondent's Exhibit 3.

RESPONDENT'S EXHIBIT No. 3

Western Warehouse Council

400 Brannan Street—San Francisco, California
Garfield 1074

Officers

President	Vice President
A. C. Fortey	W. L. Glazier
Local 595	Local 117
Los Angeles, California	Seattle, Wash.

Secretary-Treasurer

Thos. White
Local 860
San Francisco, Calif.

Trustees

H. L. Woxberg	A. J. Ruhl
Local 13	Local 334
Denver, Colo.	Spokane, Wash.

(Testimony of J. W. Estabrook.)

Affiliated With

American Federation of Labor

Western Conference of Teamsters

Joint Councils in Eleven Western States
and Canada

November 7, 1940

Mr. Powell

Montgomery Ward Company

29th Avenue & 14th Street

Oakland, California

Dear Sir:

The Western Warehouse Council representing fifty-eight local Unions in the eleven western states in a meeting in San Francisco on November 6, 1940, discussed the Montgomery Ward Company situation in this territory. Our organization, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, has for some time attempted to organize the workers coming within our jurisdiction and employed by the Montgomery Ward Company.

In the cases of Portland, Oregon and Oakland, California this organization has been very nearly completed. In the case of Portland the National Labor Relations Board election has designated our local Union #206 as the bargaining agent for these people. Despite the results of this vote and despite the rights of the workers involved to be represented

(Testimony of J. W. Estabrook.)

by our local Union in this locality the firm, through your office, has up to the present time refused to sign an agreement for the wages, hours and working conditions of these people.

We therefore wish to advise you, as legal representative of the firm, that the Western Warehouse Council will on November 15, 1940, take economic action against the firm of Montgomery Ward and Company in all of its operations west of Denver, Colorado unless labor disputes with Mr. Jack Estabrook of Portland, Oregon, Mr. George Towers of Oakland, California, Mr. Arthur Fortey of Los Angeles, California, Mr. A. Ruhl of Spokane, Washington, Mr. H. Woxberg of Denver, Colorado, Mr. Paul Berg of Martinez, California and Mr. George Stokel of Sacramento, California, are settled to the satisfaction of our organizations on or before that date.

Our individual local Unions have reported a great deal of intimidation and coercion on the part of the company towards members of our locals employed by the firm.

We desire to advise you that this united action is being taken because of the actions of your petty executives in the districts mentioned. Our office in San Francisco will be glad to sit down with you before the fifteenth of November to discuss anything you may have in mind if you do not desire to forestall the action which I have been instructed to advise you of. I may be contacted at GARfield 1074,

(Testimony of J. W. Estabrook.)

400 Brannan Street, San Francisco, and will be available there from now until November 15.

Very truly yours,

THOMAS WHITE

Sec'y-Treas.

An Affiliate of the International Brotherhood of Teamsters.

Nov. 8, 1940.

TW/jk

OEU-21320

AFL-155

Q. (Mr. Ball, continuing) Turning to the meeting of December 13, Mr. Estabrook, Mr. Glazier of Seattle was not present at the meeting here in Portland? A. Yes, he was. [117]

Q. That is what I thought I asked. He was present? A. Yes, he was.

Q. And at that time, he stated that Sears Roebuck in Seattle had signed a union shop contract?

A. Yes, he did.

Q. And he stated that he thought that Montgomery Ward should do the same as Sears Roebuck?

A. I don't know whether he stated it or not.

Trial Examiner Bokat: That is what you wanted?

The Witness: How is that?

Trial Examiner Bokat: You were asking for a closed shop from the respondent?

(Testimony of J. W. Estabrook.)

The Witness: I will have to answer that by way of explanation. We would like to have one. However, we would listen to their proposal.

Q. (Mr. Ball, continuing) Mr. Estabrook, I hand you Respondent's Exhibit No. 5, and I will ask you if you know what that is?

A. That is an advertisement out of a newspaper.

Q. Do you recall having seen that advertisement in the newspaper approximately the date indicated by the top notation at the head of the exhibit?

A. Yes, I remember seeing a similar one.

Q. You had read that advertisement prior to attending the meeting of December 13, had you not? A. Yes. [118]

Mr. Ball: I offer Respondent's Exhibit 5.

Mr. Landye: Can't we have a foundation of who, when, and why?

Mr. Walker: There is no foundation laid.

Trial Examiner Bokar: Whether the union authorized it or caused it to be inserted.

Q. (Mr. Ball, continuing) You recall that the ad was run in the Oregon Journal, December 9, 1940? A. No, I don't.

Q. Do you recall that an ad was run identical with that in all the Portland papers on or about that date?

A. I don't know whether it was in all the Portland papers.

Q. You say you don't recall there was an advertisement similar to that in the Portland papers?

A. I recall an advertisement like that.

(Testimony of J. W. Estabrook.)

Q. Prior to the meeting of December 13?

A. Yes.

Q. And you were aware that the company had caused this statement to be published?

A. I took it for granted that the company had put it in there. We didn't.

Mr. Walker: May I state an objection? I object to that on the ground that it is a self-serving declaration, no foundation having been laid; and, furthermore, there is no showing of any connection between the matter herein contained and the matters at issue in this case. [119]

Trial Examiner Bokat: The witness said he read it, and I will accept it for what it is worth. It may be material, or it may not be.

(Whereupon the document heretofore marked as Respondent's Exhibit No. 5 for identification, was received in evidence.)

RESPONDENT'S EXHIBIT No. 5

The Oregon Journal—December 9, 1940

Montgomery Ward & Company's Retail Store and Mail Order House in Portland are being picketed.

This is the result of the refusal of Wards to agree to a closed shop. No dispute exists as to wages or hours.

(Testimony of J. W. Estabrook.)

Q. (Mr. Ball, continuing) Again, referring to the meeting of December 14, you stated, did you not, or asked if the respondent would be willing to accept the agreement that Sears Roebuck at Seattle had made? A. I think that I did, yes.

Q. And do you recall what Mr. Powell said in answer to that inquiry?

A. No, I don't. It could not have been "yes", or we would have signed it.

Q. He pointed out, did he not, that that contract contained a provision for a union shop or a closed shop? A. I think so.

Q. And he restated at that time the company's objection to it? A. That is right.

Q. Do you recall that at that meeting of December 14, both you and Mr. Dixon brought up the matter of wages and made the claim that we were not paying the prevailing wages?

A. I don't believe I made that claim. I asked what they wanted to do about these wages here.

[120]

Trial Examiner Bokat: Referring to Board's Exhibit 3?

The Witness: Yes. There was some discussion on the differential between industries of a like nature. For instance, Sears Roebuck, Meier & Frank, J. C. Penney and Montgomery Ward. Montgomery Ward doesn't pay anywhere near what these people pay.

Q. (Mr. Ball, continuing) That was the statement that you made in the course of the meeting?

A. Yes.

(Testimony of J. W. Estabrook.)

Q. And that statement was denied by the representatives of the company? A. Yes.

Q. And there was a disagreement between you on that fact? A. I believe so.

Q. And at that time, it was open to you to bring up evidence of higher wages paid by other firms? A. No, I don't think there was.

Q. At least, you were not told not to?

A. I think it died down by the time that I offered to bet something that they paid less than the others.

Q. But you have not answered my question?

A. No; that is about all that there was to it.

Q. Now, at the meeting of December 16, there were, in fact, three contracts presented to the respondent?

A. The Office Workers, the Clerks and ours.

[121]

Q. (Trial Examiner Bokat) What do you mean by presented?

Mr. Ball: I mean by that, there were three contracts discussed at that meeting.

The Witness: There were three contracts in the hands of each man at that meeting.

Q. (Mr. Ball, continuing) That meeting was held where, Mr. Estabrook?

A. In Mr. Huddleston's office.

Q. Do you recall what the settling of that meeting was? A. You mean those present?

(Testimony of J. W. Estabrook.)

Q. I mean whereabouts; was it a large, or a small group, or where did you meet?

A. In Mr. Huddleston's office.

Q. You sat around a table? A. Yes.

Q. And pencils and papers were provided to each one? A. Yes.

Q. And each person had a copy of each contract to be discussed? A. Yes.

Q. In fact, each one of those contracts was discussed? A. That is right.

Q. You opened the meeting of December 16, did you not, with the request that you go over the Warehouseman's proposal first, section by section?

[122]

A. I believe that I did.

Q. And you stated, did you not, that the provision for a union shop was essential?

A. Yes, I think that I made that statement. However, up to that time, and in that meeting,—I am sure that it was in that meeting, we made an offer to accept a union shop, or consider any counter proposal to the union shop.

Q. But you did state, did you not, Mr. Estabrook that your practice was that you would insist on having something in the way of some preferential treatment for the members of your organization?

A. Let me make this clear in order to answer that question: that had been stated many times, that we were not demanding a union shop, or a closed

(Testimony of J. W. Estabrook.)

shop, but that we were asking for some sort of union preference.

Q. But the word "closed shop" was used by Mr. Powell, referring to some sort of a union preference?

A. The only time I heard it used was by Mr. Powell, when we were discussing some of these demands.

Q. You did understand that he objected to any clause under which employees would be forced to join the union by the management?

A. Not necessarily.

Q. Let us make that clear. All through the negotiations, you demanded, as one of the minimum requirements, some sort of union [123] preference in the hiring and selection of employees?

A. That is one of them.

Q. That is one of the minimum demands?

A. No. We were more interested in wages than closed shop.

Q. And your position on the question of wages was that there should be some substantial increase in the wages?

A. Certainly.

Q. You wanted some substantial increase in wages, and some form of preferential treatment of union members?

A. Is that unusual?

Q. I am not asking you that. Isn't that a fact?

A. That is right.

Q. And that is the position that you consistently took?

(Testimony of J. W. Estabrook.)

A. As a believer in unionism, I couldn't very well take any other.

Q. And you stated that your union would not be prepared to consider anything else?

A. Oh, no. Along about that time, we asked Montgomery Ward if they would consider the agreement if we quit discussing the closed shop and the union shop article.

Q. But you still wanted some increase in wages?

A. We wanted seniority, we wanted the starting time changed, and we wanted vacations; in fact, we offered to sign an open shop agreement.

Q. What do you mean by "open shop"? [124]

A. We asked Mr. Powell if he would sign an open shop agreement, and he said "No".

Mr. Ball: I move to strike the answer as not responsive. I refer to the question "What do you mean by 'open shop'." I move that the answer be stricken.

Trial Examiner Bokst: Let us have the last question and answer, to determine whether or not it was responsive.

(Thereupon the question and answer referred to were read as follows:

"Q. What do you mean by 'open shop'?

"A. We asked Mr. Powell if he would sign an open shop agreement, and he said 'No'."

A. (Witness continuing) By "open shop", I mean an employer accepts no responsibility to see whether the employees join a union.

(Testimony of J. W. Estabrook.)

Q. (Mr. Ball, continuing) But the union included in the open shop contract a clause relating to seniority?

A. Yes, an increase in wages, arbitration, and so forth.

Q. And arbitration? A. Yes.

Q. Now, on this matter of arbitration, which you say was discussed at several of these meetings, the point was simply made by Mr. Powell that if the arbitration involved a decision on a matter of management policy by a third party, to that extent it would not be acceptable? [125]

Wasn't that the position that Mr. Powell made clear to you?

A. It just didn't sound like that. I myself asked Mr. Powell if he would accept arbitration, and I named a few local people: judges, the Mayor, and in fact, I even went to the extent of mentioning some employers as arbiters. He said that would be acceptable providing the decision was not against the company policy.

Q. In other words, he felt that in matters where company policy was concerned, that should not be submitted to the decision of an outside party?

A. Yes, but if that was the case,—

Q. That was what he said?

A. Yes. But everything was against company policy.

Mr. Ball: I move to strike that statement.

Trial Examiner Bokar: All right, strike it.

Mr. Walker: I think that the witness has a

(Testimony of J. W. Estabrook.)

right to explain his answer. Simply asking a witness to answer a question "yes" or "no" does not adequately cover it.

Trial Examiner Bokat: I will let you cover it on redirect.

Q. (Mr. Ball, continuing) Turning to Article No. 11. You recall that Article 11 was discussed at this meeting of December 16, was it not?

A. No, I don't recall that being discussed at the December 16 meeting. The biggest discussion we had on that was November 12. [126]

Q. Well, turning then to the meeting of November 12, you will recall that Mr. Powell said that he had no objection to the second sentence of that paragraph?

A. No. That was the big joker. He didn't want to include the company. He just wanted it included in there that we agreed not to engage in any strikes, but he didn't want the company to agree to anything. He just wanted the first one in there.

Q. You will recall that Mr. Powell stated that a lockout on the part of the company would be an unfair labor practice, in any event, and that that matter was covered by the National Labor Relations Act?

A. Yes, we heard that.

Q. His position on that was that that was just a matter covered by law?

Mr. Walker: I will object to that as calling for a conclusion of the witness.

Q. (Mr. Ball, continuing) Didn't Mr. Powell

(Testimony of J. W. Estabrook.)

state that that was a matter which was covered by the National Labor Relations Act?

A. No, he didn't state it that way.

Q. How did he state it?

A. Well, I don't recall it, but he didn't state it the way that you have stated it.

Q. He did discuss that the National Labor Relations Act bore upon that sentence? [127]

A. I believe he did, yes.

Q. Do you recall that he raised the question about the third sentence, that it made the entire clause inconsistent? Do you recall that he stated that it made the entire clause inconsistent if the third sentence was left in? Did he make that statement to you?

A. I don't remember him making that statement to me.

Q. Do you recall, going back to the meeting of December 16, that section 11 was discussed at that time and that Mr. Powell stated or asked you whether the Union was willing to insert after the words "some union" in line 4, "other than the Warehousemen's Union, Local 206"?

A. I don't remember him asking me any question like that.

Q. Do you recall Mr. Holmes stated an objection to any modification of that sentence with any such language?

A. You will have to ask Mr. Holmes that; I don't remember.

(Testimony of J. W. Estabrook.)

Q. What happened after you finished discussing the various provisions of that contract? Do you recall what was said next? A. No.

Q. Was the office workers' contract or the Retail Clerks' Contract next considered?

A. Yes, I think there was some discussion on it; not a great deal.

Q. Do you recall that the parties then took in their hands the [128] contracts of the Office Workers, and that those contracts were then used as a basis for discussion?

A. Yes, I believe they did.

Q. Do you recall that this meeting lasted some time on December 16? A. Yes.

Q. How many hours do you estimate that it lasted? A. I think it was all morning.

Q. Do you recall that at any time there was a request on the part of the company to terminate those discussions?

A. The only request,—I don't recall that, no. But I do recall a request that the company made; however, it didn't have anything to do with that.

Q. As a matter of fact, who left the meeting first on December 16? A. The Federal Conciliator.

Q. Who was the next one?

A. I don't know; we all left. He just put his stuff together.

Q. You all were picking up your papers, and then you said something to the effect that "We have now negotiated these contracts", did you not?

(Testimony of J. W. Estabrook.)

A. No, Mr. Ashe, the Federal Conciliator, gathered up his papers and said, "We are getting nowhere. Let's go."

Q. You deny that you made that statement?

A. That is right; I never made any such statement. [129]

Q. Do you recall, in the course of the discussion, Mr. Powell was asked by one of those present representing the Union, to take the contracts and point out those provisions which were acceptable to the company? A. Yes.

Q. And he listed some seven or eight?

A. I recall one of the Union representatives taking the contract and asking him to more or less make us a counter proposal.

Q. You recall that he was asked to point out the provisions that were acceptable? A. Yes.

Q. And he did point them out?

A. He didn't point any; they weren't any of them acceptable.

Q. Let us turn to this, for example, article 7 of this contract. Didn't Mr. Powell state that that clause would be acceptable if the "5" were changed to "6"? A. Yes, if we would change it.

Q. And didn't you say that "6" was all right?

A. He said that it would be acceptable if we would change it.

Q. How about Article 6? A. Yes.

Q. That was acceptable?

A. If we would change it.

(Testimony of J. W. Estabrook.)

Q. How did he want it changed? [130]

A. He didn't like the idea of having in there some of the classifications that we put in there, such as covering supervisors, foremen, foreladies, and so forth.

Q. And did he make this statement, that Montgomery Ward & Company didn't classify them as such, or didn't classify its employees as such?

A. Yes, I believe he did.

Q. And that was the basis of his objection?

A. Yes. However, he did object to it.

Q. Now, he stated as to Article 10, that there was no objection to Article 10, didn't he?

A. Well, he had some objection, but it didn't amount to very much.

Q. He substantially agreed to that?

A. No, he didn't, substantially. There was some objection on his part to the employees, that we might disagree on how long they had been there, and so on.

Q. On how that was to be interpreted, but the clause, he didn't object to that?

A. I am not sitting here trying to mislead you.

Q. I understand that. I just want the facts.

A. I am saying that, as our contract was presented, article by article, he rejected it.

Q. You don't mean to change your testimony, do you? A. No. [131]

Q. You say that he rejected every clause?

A. Yes.

(Testimony of J. W. Estabrook.)

Q. Except as that statement may be inconsistent, Mr. Estabrook, with any previous testimony?

A. As to any changes?

Trial Examiner Bokar: He has testified that the company had no particular objection to Article 10, for example.

Q. (Mr. Ball, continuing) You don't mean now to change any of the testimony you have given?

A. I am trying to state that the articles, as drafted by the Union, he objected to the articles.

Q. Have you had any recent discussions with representatives of the company?

Mr. Walker: Just a moment. I don't know what counsel has in mind. Are we on December 16th?

Trial Examiner Bokar: Evidently subsequent to that.

Q. (Mr. Ball, continuing) Subsequent to December 16. Let me withdraw the question and ask you another. Have you made any requests for a meeting subsequent to December 16?

A. I did not.

Q. Did anyone else?

A. Mr. Brown called me for a meeting.

Q. You had previously written a letter to Mr. Brown? A. Yes.

Q. And you did request a meeting? [132]

A. That telephone call did not come to me until the Board's decision in this hearing.

Q. You mean the announcement that there was to be a hearing?

(Testimony of J. W. Estabrook.)

A. The following day, after it came out in the papers that the Labor Board was going to conduct a hearing, I talked with Mr. Brown over the phone.

Q. As a matter of fact, from December 16, the time that you wrote that letter, you did not request any further meetings?

A. I didn't say we requested any further. There was nothing to talk about.

Q. You didn't request any meetings?

A. No, and neither did they.

I might state, Mr. Examiner, that we do have representatives in the eleven western states who repeatedly contact the management. Mr. Matt Tobrinmer, he is an attorney representing our Western Warehouse Council, and he spent a week or so trying to negotiate or to get the parties together. That was in Chicago. He was in conference with Mr. Barr.

Trial Examiner Bokar: When did that take place?

The Witness: That took place between the December 16 meeting and the last week or two.

Q. (Mr. Ball, continuing) So far as your union, Local 206, is concerned, you made no request?

A. Through other people, such as Mr. Tobrinmer.

Q. Mr. Tobrinmer was trying to speak for your union? [133]

A. He certainly was.

Q. And others at the same time?

A. I don't want to confuse anyone. They were authorized to speak as a sort of mediator.

(Testimony of J. W. Estabrook.)

Q. Was he authorized to represent the employees of Montgomery Ward & Company located at Portland for the purposes of collective bargaining?

A. He was not. He was only authorized to approach Mr. Barr and other officials of the company in Chicago to see if there was some way where the officials could sit down and straighten out the question.

Q. But there has been no request for collective bargaining?

A. I think that would be a request.

Q. You said that Mr. Tobrinneer was not authorized to represent you?

A. He was authorized to represent us in the first stages.

Q. You don't know what Mr. Tobrinneer did?

A. I was not there, but I helped pay his way back there.

Mr. Ball: I am through for the time being with cross examination.

I would like to ask the Board, as suggested off the record during the lunch hour that the witness now on the stand, as long as he is in the process of giving his testimony, he cautioned not to discuss the matter with anyone else.

Mr. Landye: Do I understand that Mr. Estabrook is not to talk [134] with his own lawyer? I haven't examined him yet, of course. That may be the way they do it in Illinois, but it isn't the way they do it out here. We talk to our witnesses.

(Testimony of J. W. Estabrook.)

Trial Examiner Bokat: Well, in some jurisdictions there is some rule that, while the witness is under examination, he is not to consult with anyone concerning his testimony.

There may be times when it is advisable to impose such a rule, but in this particular instance, I am going to deny the request. I may permit it at other times during the hearing, but not in this particular instance, as I don't think that it would be proper to deny counsel the right to confer with his witness.

Mr. Walker: I think that it would be reasonable under reasonable situations. But here is a case where we have to confer with the witness in the preparation of the case.

Mr. Landye: I want to call the Examiner's attention to the fact that we started with the unfair labor practices case which we had not anticipated doing, and therefore, I haven't conferred with Mr. Estabrook except in a casual way.

Trial Examiner Bokat: I don't see any objection to you conferring with your witness. I will permit you to do it in this instance. As I say, I may not permit it at other times during the hearing. We will have to take that up when we get to it.

At this time, I will adjourn the hearing until 9:30 tomorrow morning.

(At 4:55 p.m. April 14, 1941, hearing adjourned to 9:30 a.m. April 15, 1941, same place.) [135]

(Testimony of J. W. Estabrook.)

Redirect Examination

Q. (Mr. Landye) How many years have you been in the labor movement?

A. Almost 18 years.

Q. You have been a member of labor organizations that long? A. Yes.

Q. What labor organizations have you belonged to? A. The Teamsters.

Q. For the entire length of time?

A. Almost all the time, yes.

Q. Now, Mr. Estabrook, the proposals which are shown in Board's Exhibit No. 3, when were those proposals first drafted?

A. Last summer.

Q. By that, you mean the summer of 1940?

A. Yes.

Q. About what time last summer?

A. June or July.

Q. 1940? A. Yes.

Q. Now, referring to December 4, or thereabouts, what was the [142] Warehousemen's Union, or various reasons why the Warehousemen's Union struck Montgomery Ward?

Mr. Ball: I will object to that as not a proper matter to be brought out in this hearing, and irrelevant and immaterial, and incompetent to any issues in this case, and, for the further reason that it is going into matters which the Board has not elected to go into, and not proper for counsel to go into.

Trial Examiner Bokat: The objection is overruled.

Q. (Mr. Landye, continuing) Answer the question. A. Well, for various reasons.

Q. What were the reasons?

A. One of the most important reasons is that the membership got tired of Montgomery Ward stalling us around.

Q. What do you mean, Mr. Estabrook, when you say "stalling us around"? Tell us what you mean by that?

A. Do you want it in my own words?

Mr. Ball: Let the record show the same objection and the same ruling to the last question.

Trial Examiner Bokat: Yes, you have a standing objection.

A. Well, one reason was this: when a person is told to go to Chicago, or when a person goes to Chicago to contact Montgomery Ward Company officials, and then they tell us to go to Portland, and then from Portland we go to Oakland, and talk with some other officials there, and then we come back to [143] Portland, it is about time to think that they are stalling us along.

Mr. Ball: I move to strike that as an opinion and conclusion of the witness.

Trial Examiner Bokat: Yes, strike the last answer.

Mr. Landye: Mr. Examiner, the appearance of Mr. Estabrook here is in sort of a dual capacity.

(Testimony of J. W. Estabrook.)

One is that he is testifying to the fact; the other is as a leader in union affairs for 18 years.

Trial Examiner Bokat: I understand. The witness can state that a strike vote was taken, and when it was taken, and why it was taken, if that becomes material.

The question is, as I understand it, or one of the questions, whether the strike took place as the result of unfair labor practices. If it is a fact, then the reasons for the strike vote would have some bearing on the case.

Mr. Ball: Let the record show that the respondent does not agree with the statement just made by the Trial Examiner.

Trial Examiner Bokat: That is my understanding of the issues. Doesn't the complaint allege that the so-called unfair labor practices caused the strike?

Mr. Ball: Yes.

Trial Examiner Bokat: This testimony then would be material.

Q. (Mr. Landye, continuing) Let me ask you the question directly: was one of the reasons that the strike was called [144] because of the Union's belief that the company was not bargaining in good faith?

Mr. Ball: I will object to that, as to what the Union believed, as an opinion of the Union on what goes to the merits of this case. That is not a matter that the witness should testify to; he has shown no

(Testimony of J. W. Estabrook.)

competency, and in any event, wouldn't be competent to testify to that.

The expression of opinion of this witness, or any group of witnesses would be incompetent, and irrelevant to any issue in this case. Furthermore, it is a leading question made to his own witness.

Trial Examiner Bokat: Well, I will sustain the objection.

Q. (Mr. Landye) Will you give us fully the reasons that the Union called the strike?

Mr. Ball: I will object to that question as being a question following a leading question, and the whole purpose of the point counsel was trying to bring out was served by asking the preceding leading question.

Trial Examiner Bokat: I will have to overrule it.

A. The membership unanimously instructed me to strike Montgomery Ward.

Trial Examiner Bokat: When did this take place?

The Witness: That took place at one of our meetings, prior to the time that the strike was called.

Trial Examiner Bokat: Can you fix the time approximately? [145]

The Witness: I couldn't tell you that without referring to the records.

Trial Examiner Bokat: Were you present?

The Witness: Yes.

(Testimony of J. W. Estabrook.)

Trial Examiner Bokat: Was there a discussion prior to that in the meetings?

The Witness: Yes.

Trial Examiner Bokat: What was the nature of the discussion?

Mr. Ball: I will object to the question of the Examiner as calling for an opinion and conclusion of the witness, and as calling for a generalization.

Trial Examiner Bokat: I agree with you. I think that it does call for a generalization. I certainly have no objection to your objecting to my question.

Mr. Ball: I appreciate that.

Trial Examiner Bokat: What was the discussion relating to the calling of the strike?

The Witness: The only discussion was that the membership took the position,—I made the statement on the floor of the meeting that Montgomery Ward & Company was trying to give us the,—

Mr. Ball: I object to the general statement, without naming the parties who made the statement, and as irrelevant and incompetent to any issue in this case.

Trial Examiner Bokat: I will overrule the objection. [146] Was there a motion made at this meeting, with reference to a strike being called by anyone?

The Witness: No; there was not. There was not a motion actually made at the general meeting. The motion was made by people employed at Montgomery Ward & Company, at a later meeting.

(Testimony of J. W. Estabrook.)

Trial Examiner Bokat: You say there was a meeting at which a motion was made to go on strike?

The Witness: That is right. That action was taken a day or two before the strike in the Al Azar Temple.

Q. (Mr. Landye, continuing) Was any other reason given besides the ones you have given?

Mr. Ball: I object to that as calling for a conclusion with reference to a question already stricken.

Mr. Landye: I am merely asking him if there were any other reasons given.

Trial Examiner Bokat: At the meeting?

Mr. Landye: At the meeting.

Trial Examiner Bokat: I will let the witness describe the general discussion at the meeting.

The Witness: Well, amongst other things, there was a discussion on the discharge of some employees for the reason that they had relatives employed at Montgomery Ward & Company.

Trial Examiner Bokat: Are we interested in that, Mr. Landye? [147]

Mr. Landye: No.

Trial Examiner Bokat: That is not an issue in this case, and therefore, I don't want to go into it.

The Witness: Just a minute. I understand it is a reason,——

Mr. Ball: I think counsel who called for the answer as one of the reasons for the strike, shouldn't object to it.

(Testimony of J. W. Estabrook.)

If he called for it, he has opened it up.

Trial Examiner Bokat: I am not preventing him from answering the question, but I am just stating that the question of discharge of certain employees because of relationship amongst the employees is not in issue in this case.

A. The Montgomery Ward Company had a rule that relatives do not work for Montgomery Ward, and there were a lot of people employed out there that were members of the union, who were relatives, and the rule had never been enforced before until certain of the people out there at Montgomery Ward's took an active part in unionizing or in organizing the place; after that, after the rule had laid dormant, they began enforcing it, and it was only enforced as to people who were members of the Union.

Mr. Ball: I will move to strike that as a conclusion.

Trial Examiner Bokat: Yes, that is a conclusion, or a generality.

Mr. Landye: Counsel was the one who said, or, rather, who insisted that the witness answer the question, and he has no right [148] to complain of the question nor the answer, once he has gotten it.

Trial Examiner Bokat: I know, but that is not in issue. Were there any other reasons?

The Witness: That is about all I can think of.

Trial Examiner Bokat: All right.

Q. (Mr. Landye, continuing) Now, Mr. Estabrook, referring to the meeting of December 13, do

(Testimony of J. W. Estabrook.)

you recall whether or not at that meeting there was any request by any of the union representatives for the company to submit a counter proposal?

A. Yes.

Mr. Ball: Just a minute. I will object to that question as being practically the testimony of Mr. Landye, putting the whole answer in the mouth of Mr. Estabrook. It is leading, of the sort that the ruling against the cross examination was intended to prevent.

I further move that my objection be inserted in the record ahead of the answer.

Trial Examiner Bokat: Yes, I will ask that the objection be put in the record prior to the answer of the witness.

Now, will you go back, Mr. Nelson, and read the question for me?

(Thereupon the last question and answer were read aloud as hereinabove recorded.)

Mr. Ball: May I, for the sake of the record, state that, in [149] addition to calling for a conclusion and opinion of the witness, it uses a term which is ambiguous. It calls for a legal conclusion as to what a counter proposal is. That is a question of law, and this witness is not qualified to give an accurate description of it.

Trial Examiner Bokat: Will you read the question again, please?

(Thereupon the last question and answer were again read aloud by the reporter as hereinabove recorded.)

(Testimony of J. W. Estabrook.)

Trial Examiner Bokat: Instead of wasting time, I presume that the question asked by Mr. Landye is preliminary. The objection is technically correct.

Mr. Landye: It is a preliminary question.

Trial Examiner Bokat: I understand, but I would rather have from the witness' mouth what took place, instead of asking him for the so-called counter proposal.

Q. (Mr. Landye, continuing). Were there any discussions at that meeting relating to a counter proposal?

Mr. Ball: Same objection.

Trial Examiner Bokat: Overruled.

Mr. Ball: For the further reason that the purpose of the question, as reframed, was to repeat the purpose of the previous improper question, taking advantage of the previous improper question.

Trial Examiner Bokat: You may answer. [150]

A. Yes, there was discussion about a counter proposal.

Mr. Ball: I move to strike that as an opinion of the witness.

Trial Examiner Bokat: The motion is denied.

Q. (Mr. Landye, continuing) What were those discussions?

Trial Examiner Bokat: State what was said, and who said it.

A. At the beginning of the meeting, Mr. Powell was asked by myself if they had a counter proposal to make, and he said "Yes."

Q. (Mr. Landye, continuing) What did he say?

(Testimony of J. W. Estabrook.)

A. "Call off the strike and put the people back to work."

Q. That is what he said? A. Yes.

Mr. Ball: It is now apparent that this calls for a repetition of matters that were gone into yesterday.

Trial Examiner Bokat: That is correct. This matter was gone into on direct.

Mr. Landye: I understand, but I am going into matters not covered, and I naturally have to have the connection.

Trial Examiner Bokat: All right, I will let it stand as a preliminary question.

Q. (Mr. Landye, continuing) Go ahead.

A. And then later in the meeting, I think that you, yourself, asked Mr. Powell for a counter proposal.

Mr. Ball: Same objection. [151]

Trial Examiner Bokat: The motion is denied.

A. (Witness continuing) He said that he had nothing to say, except that the comment that he made might be considered as a counter proposal.

Trial Examiner Bokat: I don't understand the answer. I am not sure whether I do or not. Did Mr. Powell make any further statement as to what he meant by the comments?

The Witness: No, he did not, and the only comment that he made was that, "No", against company policy.

(Testimony of J. W. Estabrook.)

Mr. Ball: I move to strike the answer out as a conclusion and opinion of the witness.

Trial Examiner Bokat: Yes, I will grant the motion. Strike it out.

Q. (Mr. Landye, continuing) Was there any written counter proposal given at that meeting?

Mr. Ball: I will object to that as irrelevant. The meetings have been gone into fully. It is obvious that it is repetition, going into matters that were thoroughly covered on direct examination yesterday, and the witness has already testified and described everything that he could recall. He so stated. This is certainly the kind of abuse against which the original objection to Mr. Landye's examination was directed; and I object, on the further ground, that it is incompetent, and irrelevant, and does not tend to prove any issue.

Trial Examiner Bokat: I will overrule the objection. [152]

The Witness: Will you repeat the question?

Mr. Ball: May I point out that this is going into the very thing, which is part of the due process problem. We are being confronted with a double barreled attack. I think that we are now verging into matters which show the great vice of this sort of practice, which is countenanced by the questions and rulings of the Examiner.

Trial Examiner Bokat: I am interested in the counter proposals offered by the company, if any were offered.

(Testimony of J. W. Estabrook.)

Mr. Ball: May I point out,—?

Trial Examiner Bokat: May I finish my statement?

Mr. Ball: Yes, certainly.

Trial Examiner Bokat: I had assumed, from a negative inference that no such counter proposals were offered. I wanted to know whether they were or not. I don't think that it has any particular bearing on the issue. Rather, I will put it this way: I don't know whether it has any bearing on the issue or not. It might have, and I would like to know.

Mr. Ball: May I point out, Mr. Examiner, that this examination of the witness by Mr. Landye is after the witness had testified yesterday afternoon, after Mr. Landye has had the opportunity to refresh his recollection as to what Mr. Landye said at this meeting?

Trial Examiner Bokat: That may have happened. I will let the question stand. Were there any written counter proposals [153] submitted at the meeting? A. No, sir; there were not.

Mr. Ball: I understand that my objection runs to this entire line.

Trial Examiner Bokat: Yes, to my questions and all the questions—

Mr. Ball: (Interposing) To the entire line?

Trial Examiner Bokat: Yes.

Q. (Mr. Landye, continuing) Were there any discussions at the December 13 meeting relating to

(Testimony of J. W. Estabrook.)

whether or not anyone had the power to act for the company?

Mr. Ball: Same objection, going into the December 13 meeting; fully covered.

Trial Examiner Bokat: That is technically correct. I will allow it.

A. Yes, there was some discussion as to who had the power to negotiate.

Q. (Mr. Landye, continuing) And were those discussions between you and Mr. Powell, or who were they between, and what were they about?

Mr. Ball: Same objection.

Trial Examiner Bokat: Overruled.

A. They were between you and Mr. Powell.

Q. (Mr. Landye, continuing) What, exactly, was said?

Mr. Ball: Let the record show that my objection runs to the [154] entire line of examination?

Trial Examiner Bokat: Yes.

A. You asked Mr. Powell if he had the power to negotiate an agreement, and he said, "I don't know; I guess so," that the Board of Directors would have to sign it.

Mr. Landye: I think that is all.

Redirect Examination

Q. (Mr. Walker) Mr. Estabrook, I call your attention to your testimony on direct examination relative to the comment of Mr. Powell that the force and effect of Article 13 of the agreement, marked

(Testimony of J. W. Estabrook.)

as Board's Exhibit No. 3 would be satisfactory, provided the results of the Board of Arbitration would not run counter to company policy.

Mr. Ball: Well, I want to object to this. I don't know whether it is redirect, or what it is. It is certainly leading in form, and not proper redirect examination, going into matters that have previously been covered.

Trial Examiner Bokat: I don't believe that a question has been asked, Mr. Ball.

Mr. Walker: There is no question before the witness.

Mr. Ball: There isn't?

Trial Examiner Bokat: It is just a statement calling attention to his testimony.

Mr. Ball: All right. I just lost myself in this long chain of words. [155]

Q. (Mr. Walker, continuing) Mr. Estabrook, what effect would the acceptance of Mr. Powell's suggestion relative to the arbitration, if the results of the arbitration were not contrary to company policy, have on the operation of the agreement as a whole?

Mr. Ball: Same objection.

Trial Examiner Bokat: Yes, I will sustain that. It calls for a legal conclusion.

Mr. Walker: That is all.

Trial Examiner Bokat: Any recross?

(Testimony of J. W. Estabrook.)

Recross Examination

Q. (Mr. Ball) Before you went into this meeting where Mr. Landye was present, you had a discussion with Mr. Landye? A. Which meeting?

Q. Of December 13 and 14, about the tactics to be employed at that meeting?

A. No, I don't think so; I don't recall any.

Q. You had a discussion with Mr. Landye as to what you could do in the way of asking questions to build up an unfair labor practices charge against this company?

A. No. I have negotiated a contract or two since I have been in this business, and I don't have to ask anybody.

Mr. Ball: I move to strike the answer out, Mr. Examiner. I asked the witness if he had any discussion with Mr. Landye about the possibility of building up an unfair labor practices charge against the company. [156]

Trial Examiner Bokar: I will strike the answer. Answer the last question, will you?

A. No.

Mr. Walker: I submit that counsel asked for the question, and then he didn't like the answer.

Trial Examiner Bokar: The answer is "no"?

The Witness: That is correct, yes. The answer is "no".

Q. (Mr. Ball, continuing) You had no discussion with Mr. Landye before this meeting about unfair labor practices charges? A. No.

(Testimony of J. W. Estabrook.)

Q. When did you file the charge with the Labor Board? A. I don't have the date.

Mr. Landye: The record shows the date.

Mr. Ball: Sometimes these records do not show the date of the original charge after they have been revamped.

Mr. Walker: If they were revamped or amended, both charges would be *show*, or, rather, it would show whether it was the original charge or the amended charge.

Trial Examiner Bokar: I call the attention of counsel to the fact that the original charge was filed on January 20; no, it was filed on January 21, 1941. Is that correct, Mr. Walker?

Mr. Walker: Yes.

Q. (Mr. Ball, continuing) Had you had any previous discussions with the National Labor Relations Board relative to the filing [157] of charges for failure to bargain? A. No, sir.

Q. What time was it that you caused to be circulated amongst your employees information to the effect that these charges were going to be filed in order for them to get back pay?

A. I never——

Mr. Walker: Just a minute. I will object to that as assuming facts not in evidence.

Trial Examiner Bokar: Yes, reframe your question.

Q. (Mr. Ball) All right. Have you at any time led any of your members to believe that they were

(Testimony of J. W. Estabrook.)

going to get back pay as the result of your filing charges with the National Labor Relations Board?

A. No, sir.

Q. You have never caused any information to be circulated amongst the members to the effect that they would get back pay if charges were filed with the Board?

A. No, sir.

Q. Have you heard it discussed?

A. Yes, I have heard lots of discussion, but this is a free country.

Q. Have you ever seen or caused stories to be placed in the newspapers to that effect?

A. No, sir.

Trial Examiner Bokat: It has been called to my attention [158] that the petition for certification and investigation of the office employees was filed January 21, and not the charge filed against the company. I was looking at the wrong file. The charges filed by the Warehousemen's Union were on December 10, 1940. The original charge is in evidence, and that can be verified.

Mr. Walker: Excuse me. It is December 13, and the Retail Clerks was on the 21st of December.

Q. (Mr. Ball, continuing) Then you had already drafted and prepared for filing with the National Labor Relations Board the charges for failure to bargain collectively before you went into this session on December 13?

Mr. Landye: That is argumentative. The record speaks for itself as to the time. He is merely arguing with the witness.

(Testimony of J. W. Estabrook.)

Trial Examiner Bokat: You are technically correct, but I will let the question stand.

The Witness: Will you repeat the question?

Trial Examiner Bokat: Will you read the question, Mr. Reporter?

The Witness: Let me have the question again.

(Thereupon the last question was read aloud by the reporter as above recorded.)

A. Not necessarily; it could have been after the meeting.

Q. Those charges had been discussed between you and Mr. Landye prior to the time that they were filed with the National [159] Labor Relations Board? A. I don't remember.

Q. Well, now, let me refresh your recollection. Looking at the copy of your original complaint filed on December 13,—

Trial Examiner Bokat: The original charge.

Q. (Mr. Ball, continuing) The original charge. You will notice that your name and Mr. Landye's name appear on the complaint.

A. That is right.

Q. You had discussed it with Mr. Landye, had you not? You had discussed the substance of that complaint before that complaint was filed?

A. I don't think that we discussed it until after the meeting.

Q. Who prepared the statement in the charge?

A. I did.

Q. Without consultation with Mr. Landye?

(Testimony of J. W. Estabrook.)

A. Well, I furnished the information.

Q. Mr. Landye drew it up, did he not?

A. He drew up what I told him to.

Q. Did he use your actual language in the charge, or did he use some language of his own?

A. I think that he had something to do with it.

Q. You had furnished the information, and, in other words, had discussed the matters with him relating to this before the charge was drawn?

A. Yes. [160]

Q. So you had had a discussion with Mr. Landye prior to the time of the meeting of December 13?

A. I think we did it after the meeting.

Q. At least, you had it before the meeting of December 16? A. Yes.

Q. You had never discussed possible charges with the National Labor Relations Board before the meeting of December 13, although this long charge was prepared by you and filed with the Board on the same day that the meeting was held?

A. It could be; I think that is right. I think that you answered it.

Q. What is your recollection?

A. That is my recollection.

Q. You are testifying under oath that you did not discuss those matters with Mr. Landye before you went into the meeting of December 13?

A. I don't think that we did; I don't remember.

Q. Are you testifying under oath that you did not file these charges, and did not go into the

(Testimony of J. W. Estabrook.)

meeting with the intention of building up the charges?

A. I have answer that twice; No, I did not.

Q. You had discussed these charges before you went into the meeting of December 16?

A. December 16?

Q. Yes. [161]

A. Yes. Sure, there had been discussion by that time.

Q. Well, now, let me call your attention to this document. (indicating document) The charge there shows that it was subscribed and sworn to on the 10th day of December, doesn't it?

A. That is right.

Q. Now, is the oath taken by Mr. Landye there correct, or is your statement on the stand correct, under oath?

A. Just a minute. Where is that other copy? I guess I was three days wrong there. You had the record, I didn't.

Q. Then your recollection of it is what? Is it right or wrong? Your testimony here was that you did not discuss this matter with Mr. Landye, and therefore, your testimony was false?

Mr. Landye: Just a minute. He didn't state that he had not discussed it with me; he said he had.

Trial Examiner Bokst: The objection is well taken to the form of the question. Reframe it.

Q. (Mr. Ball, continuing) Now, with this in your hand, do you recall having had a discussion

(Testimony of J. W. Estabrook.)

with Mr. Landye about the filing of an unfair labor practice charge against Montgomery Ward & Company prior to the time of the meeting of December 13?

A. I still say that I don't recall the date; but I apparently did.

Mr. Ball: That is all. [162]

Trial Examiner Bokar: Are there any further questions of this witness? The witness is excused.

(Witness excused)

Mr. Ball: I want to make one statement for the record. Will the Trial Examiner confirm this statement, that the records which were shown to Mr. Estabrook were the records of the original files in the Board's possession, now admitted in evidence as Board's Exhibit No. 1, and not records kept by me.

Trial Examiner Bokar: I think it is apparent from the record that you showed to the witness the original charge contained in the files, and the matter referred to the witness was in the files of the Board.

Mr. Ball: Thank you.

Mr. Walker: Mr. Holmes.

MARK HOLMES

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Bokat: Give your full name and address to the reporter.

The Witness: Mark Holmes, (spelling).

Trial Examiner Bokat: M-a-r-k H-o-l-m-e-s?

The Witness: Yes.

Direct Examination

Q. (Mr. Walker) Where do you live? [163]

A. 7706 Southeast Reedway.

Q. In Portland? A. Yes.

Q. What is your present occupation?

A. Business agent for the Warehousemen's Union.

Q. How long have you held that position?

A. About 3-1/2 years.

Q. That is for Local 206? A. Yes, sir.

Q. And in that position have you had occasion to meet with any representatives of the respondent here?

A. I have been in every meeting with the Warehousemen,—every meeting that the Warehousemen have had with Montgomery Ward and Company.

Q. You mean the meetings held in Portland?

A. Yes, and in Oakland, also.

Q. When was the first meeting that you attended?

(Testimony of Mark Holmes.)

A. Well, I think the record as to the dates is here, and I attended every one in Portland except the last one when Mr. Brown was present.

Trial Examiner Bokat: I think that it has been testified that the first meeting took place in November,——

Mr. Ball: November 12.

Trial Examiner Bokat: November 12, 1940.

Q. (Mr. Walker, continuing) Who attended that meeting representing Local 206? [164]

A. Mr. Estabrook and myself.

Q. Who attended the meeting representing the Respondent?

A. Mr. Powell and Mr. Barth and Mr. Huddleston.

Trial Examiner Bokat: Is the testimony of this witness going to be substantially the same as that of the previous witness?

Mr. Walker: I am not going to go over with this witness the details with such minuteness. In some respects it will be the same; in others, it will not.

Trial Examiner Bokat: My understanding is that he is going to testify about the same conferences as the previous witness testified about?

Mr. Walker: That is correct.

Trial Examiner Bokat: All right, proceed.

Q. (Mr. Walker, continuing) Was a form of Board's Exhibit 3 at the meeting on November 12 before the parties?

(Testimony of Mark Holmes.)

A. Yes, the form of our proposed contract?

Q. Yes. A. Yes, it was.

Q. Do you know a Mr. Estabrook?

A. Yes.

Q. You say that you and Mr. Estabrook met with the Respondent's representatives in various meetings. Did you meet with any of the respondent's representatives at a time prior to November 12?

A. No, I didn't. [165]

Q. On or about September, 1940 do you know where Mr. Estabrook was?

A. I believe he was in Denver, or back east.

Q. How do you know that he was in Denver?

A. The Western Conference of Teamsters was held in Denver, and Mr. Estabrook sent us a letter asking that we forward at least three or four copies of the Montgomery Ward proposed agreement to Washington, because he was going to meet with the Company officials in Chicago.

Q. Was it done? A. It was.

Q. After Mr. Estabrook's return from the East, did you have occasion to telephone or make contact with any of the representatives of the respondent, and before the meeting of November 12?

A. I did not, no.

Q. I see. Did you have any talks with Mr. Huddleston at any time prior to November 12?

A. Not to my knowledge.

Q. Now, will you relate what occurred at the meeting of November 12? Let me withdraw that

(Testimony of Mark Holmes.)

question. Was there a discussion relative to a meeting between Mr. Estabrook, and Mr. Heidinger, Mr. Ball and Mr. Barr?

Mr. Ball: I will object to this as not being a competent way to prove this. Besides, it is repetitious. [166]

Trial Examiner Bokat: I will sustain the objection.

Mr. Walker: I submit that he can answer that "yes" or "no".

Trial Examiner Bokat: I know, but we have gone over that. Suppose that you reframe it.

Q. (Mr. Walker, continuing) At the meeting of November 12, do you recall how the meeting opened up, or how the discussion got under way?

A. Well, Mr. Estabrook started the meeting by saying that he had met with the officials of the Company in the East, and that they were willing to sit down and discuss an agreement and come to a contract.

Q. And then following that, what was done?

A. We submitted our proposals of the agreement,—copies of the agreement.

Q. And a copy of the agreement was before each party present at that meeting? A. Yes.

Q. Was the agreement then taken up or discussed? A. Yes, we discussed it.

Q. In what manner was it discussed?

A. Well, each party had a copy of it, and we were to go through the agreement, clause by clause,

(Testimony of Mark Holmes.)

and the clauses on which we disagreed we were to pass on, or pass by, and then come back to them later.

Q. Did anybody make any suggestion similar to that? [167] A. Yes.

Q. Who?

A. Mr. Estabrook made the statement.

Q. Will you refer to Board's Exhibit No. 3, and state whether or not there was any discussion concerning that article?

Mr. Ball: I don't wish to be technical, because we have certainly nothing to conceal. However, it seems to me that the time of this hearing is being consumed by a detailing of matter already gone into.

Trial Examiner Bokar: I agree with you that it should not be repeated. However, I can't determine at this time whether there is any variance between the Board's Witnesses and the Respondent's Witnesses as to what took place. I will let him go ahead for the time being to see how it goes.

Q. (Mr. Walker, continuing) You may answer.

A. They objected to it as an article. They said that it was a matter of fact, because we had been designated as the sole collective bargaining agent by the Labor Board. However, they didn't agree to have it in the contract. They said the law would take care of that.

Q. What did you do after that?

A. We went to Article 2.

(Testimony of Mark Holmes.)

Q. Was there any discussion on Article 2?

A. Absolutely, there was.

Q. What was the discussion? [168]

A. Against company policy, and they wouldn't agree to any part of it.

Q. Who said that? A. Mr. Powell.

Q. What did you do on Article 2?

A. We put a check in front of it, and went to the next article.

Q. What occurred with respect to Article 3?

A. Well, for the first sentence, they said that would be all right, but they said they worked some employees at certain times of the year for more than 8 hours without the payment of overtime. They were willing that overtime be paid over 40 hours a week, but not over 8 hours in any one day, and Saturday could not be an overtime day. The way the work week was staggered, it started out on Friday and ran until Thursday the next week. It was also necessary, they stated, that they start some of the employees at 5:30 in the morning.

Q. What was done with respect to Article 3?

A. Well, we put a check in front of it and went on to the next article.

Q. Was there any discussion concerning it?

A. Article 4?

Q. Yes.

A. Yes, Mr. Powell said at that time that they could not get any increases at all. There was also

(Testimony of Mark Holmes.)

a disagreement as to some of [169] the classifications, as to whether they came under our jurisdiction. I think it was the tailor and the *had* tailor, —I don't know which; there was one or two others.

Q. I call your attention to Article 6. Was there any discussion concerning it?

A. Well, the only thing they said was that they didn't employ anybody under those names, and they didn't think it was necessary or any use to argue about something that they didn't contemplate doing.

Q. When you say "they", whom do you mean?

A. I mean the company.

Q. Next, I call your attention to Article 11. Was there any discussion concerning it?

A. Yes.

Q. Tell us about it?

A. There was quite a bit of discussion. After reading it through the company could not see the reason for it. And I tried to explain to them why, and I brought up a case at the time. The linoleum layers were having a disagreement with Montgomery Ward & Company; they were trying to put Montgomery Ward on the unfair list, because they would not sign up with them. I told Mr. Ball that it would be for his protection; that before any employees of Montgomery Ward could call a strike, they would have to go before the Portland Central Labor Council to defend themselves against any charges. [170]

(Testimony of Mark Holmes.)

Mr. Powell said, after changing the wording a little, he would probably agree to it.

Trial Examiner Bokat: Agree to the entire section 11?

The Witness: Yes.

Q. (Mr. Walker, continuing) Let us go back to Article 10. Was there any discussion on it?

A. That is, on the vacation?

Q. Yes.

A. They felt that it was up to the company, and that it should be left to them as to who was the judge when they had been there a year or not.

Q. I call your attention to Article 13. Was there any discussion concerning it?

A. Yes, quite a bit.

It came up several times during the meeting, and the company felt that the final say should be with the company as to the matters we discussed, as to discharge, and so forth; that they should have the final say.

Q. Was there anything else discussed at that meeting?

A. No, not that I know of.

Q. When was the next meeting that you attended?

A. I attended a meeting in Oakland, California.

Q. Who were representing the Union?

A. Mr. Estabrook and myself; Mr. White, and three or four representatives of the Retail Clerks.

[171]

Q. Do you know a Mr. Towers?

A. Yes.

(Testimony of Mark Holmes.)

Q. Was he there? A. Yes.

Q. Who represented the respondent?

A. I know Mr. Powell was there, and I believe that Mr. Denecke. And there were six or seven officials of the company; I don't remember their names.

Q. How did that meeting begin?

A. Well, it began by a discussion of the agreement, and it soon ended; we were trying to find out what the company policy was. When Mr. Estabrook came back from Chicago, he was told that Mr. Powell and Mr. Huddleston had the power to settle the strike; and we found that most of the things that we proposed were against company policy. And we tried to find out what the company policy was, whether it was a set of books or company philosophy, or what it was.

Mr. Ball: I move to strike the answer of the witness as indulging in opinions and conjecture, based on hearsay. That is not a statement of fact. I object particularly with relation to what Mr. Estabrook found.

Trial Examiner Bokar: That part may be stricken out. The other part may stand. Of course, it is difficult for the Examiner to strike out any portions of an answer that is somewhat extended, unless his attention is called to the particular [172] portion.

Q. (Mr. Walker, continuing) Was there any discussion concerning a publication on company policy, or any books or pamphlets relating to that?

(Testimony of Mark Holmes.)

A. I believe that Mr. Powell said there wasn't any such,——

Trial Examiner Bokat: Well, any such what?

The Witness: Not any written policy of the company.

Q. (Mr. Walker, continuing) Now, did you have copies of the agreements before the parties?

A. I believe we did, yes.

Q. And was there any discussion on the agreements?

A. There wasn't so very much, it was mostly on the policy, because every time we discussed an article, it was always against the company policy.

Mr. Ball: I move to strike the last part of the answer, that "every time we discussed an article, it was always against the company policy."

Trial Examiner Bokat: Yes. Strike it out.

Q. (Mr. Walker, continuing) Why wasn't the agreement discussed at that meeting?

A. Well, it didn't seem like,——

Mr. Ball: I will object to that as not calling for the proper testimony.

Trial Examiner Bokat: Yes. Sustained as to the form. Reframe it.

Q. (Mr. Walker, continuing) Was there any reason for discussing [173] the question of company policy at that meeting? A. Yes.

Q. Go ahead and tell us.

A. At that meeting, I asked Mr. Powell if the company policy had changed any in the last few

(Testimony of Mark Holmes.)

years, and he said not; not to his knowledge, that it had not; and then I asked him if the policy of the company was the same now as in 1936 or 1937, when they discharged 100 or 150 people for joining the union, and he said, "not to his knowledge," that the company policy had not changed since that time, or since that date.

Q. Was there any other conversation, or anything else said about company policy? A. No.

Q. That you recall?

A. Not that I recall.

Q. Was there any reason given, or were there any reasons why the discussion of the proposed agreement was not taken up at that time?

A. Well, we tried to find out who would have the power to settle the dispute if we did arrive at an agreement; that is, if we did arrive at the agreement, who would have the power to sign it. We didn't seem to be able to find out.

Trial Examiner Bokat: How is that?

The Witness: We didn't seem to be able to find out who had the power. [174]

Mr. Ball: I move to strike that as a conclusion of the witness, the result of a conversation, rather than what was said.

Trial Examiner Bokat: All right, I will sustain the objection. State more particularly what was said, and by whom.

Q. (Mr. Walker, continuing) Did any of the representatives of the Union make any inquiry to

(Testimony of Mark Holmes.)

determine who had the power to execute an agreement if such was reached? A. Yes.

Q. Who?

A. Mr. White asked Mr. Powell that question.

Q. And did Mr. Powell answer?

A. He said that the Board of Directors would sign any agreements that we arrived at.

Q. Was there any inquiry concerning the location of the Board of Directors, or the head officers of the company?

A. Yes. After quite a bit of discussion on company policy, Mr. Estabrook asked that, and he also asked that if he and Mr. Powell and Mr. White would take the plane to Chicago to settle the thing, could they settle it right there; he said that that was the only thing to be done, apparently. If whatever we proposed was against company policy, he wanted to know whether they could go back there and decide it.

Trial Examiner Bokat: Who said that?

The Witness: Mr. Estabrook. [175]

Trial Examiner Bokat: To whom?

The Witness: Mr. Powell.

Trial Examiner Bokat: What was his reply?

The Witness: He said he would contact them and find out after they got out of the meeting, and then let us know Thursday of the next week.

Q. (Mr. Walker, continuing) Did you meet with Mr. Powell again?

(Testimony of Mark Holmes.)

A. I believe that Mr. Estabrook did; I did not. I don't know whether he did or not.

Q. Did you go back to Chicago? A. No.

Q. Do you know what Mr. Estabrook learned from Mr. Powell, if anything?

A. I don't know that.

Q. Is there anything further that occurred in that meeting in Oakland?

A. Not that I recall, no.

Q. Did you meet with the company again after that?

A. Yes, we met back here in the City of Portland.

Q. Who represented Local 206 at that meeting?

A. Mr. Estabrook and myself.

Q. Who represented the company at that meeting?

A. Mr. Barth, Mr. Powell, and Mr. Huddleston. I think Mr. Denecke was sitting in some of the meetings. I am not sure [176] about that.

Trial Examiner Bokat: Are you referring to the meetings of December 13 and 14 and 16?

The Witness: Yes, we are back in Portland now.

Trial Examiner Bokat: Those are the meetings at which Mr. Ashe was present?

The Witness: That is right.

Q. (Mr. Walker, continuing) Were copies of the proposed agreement before the parties at that time? A. They were.

(Testimony of Mark Holmes.)

Q. Was the proposed agreement discussed at that meeting? A. Yes, at some length.

Q. How did that meeting open up?

A. It was the same as the other ones; we started on the different clauses of the agreement, and didn't get any place with them.

Trial Examiner Bokat: You are referring to the same agreement, Board's Exhibit 3?

The Witness: Yes, the same agreement.

Trial Examiner Bokat: All right.

Q. (Mr. Walker) Were any other persons present than the ones that you have just now mentioned? Were any other persons other than Mr. Estabrook, yourself, Mr. Ashe, Mr. Denecke, Mr. Huddleston and Mr. Barth?

A. I believe Mr. Landye was present.

Q. Do you know a Mr. Dixon? [177]

A. Yes.

Q. Was he present? A. Yes.

Q. Do you know a Mr. Hicks? A. Yes.

Q. Was he there?

A. Yes, and Mr. Langford was there.

Q. Do you know Mr. Allen? A. Yes.

Q. Was he there? A. Yes.

Q. Anybody else?

Mr. Ball: We agreed that the parties were there that Mr. Estabrook testified were there.

Mr. Walker: All right.

Q. (Mr. Walker, continuing) Now, didn't the meeting at Oakland and this meeting of December 13,—strike that. Between the time of the meeting

(Testimony of Mark Holmes.)

at Oakland and this meeting of December 13, had you received any written instrument from the company? A. I had not.

Mr. Ball: I will object to that as calling for a matter that has nothing to do with the case, and irrelevant to any issue involved.

Trial Examiner Bokat: You mean this witness?

Mr. Walker: Local 206. [178]

A. I had not received any.

Q. (Mr. Walker, continuing) Do you know if Local 206 had?

Trial Examiner Bokat: Local 206?

Mr. Walker: Yes.

Mr. Ball: What about my ruling, Mr. Examiner?

Trial Examiner Bokat: I will let the question stand.

A. It would be in Mr. Estabrook's capacity as financial secretary.

Q. You mean in his possession?

A. That is right.

Q. Had you learned whether any was received?

Mr. Ball: I will object to that, naturally. I have been rather patient; I think the Examiner will appreciate that. However, we should keep this hearing within some bounds.

Trial Examiner Bokat: Is there any dispute as to whether the company submitted a counter proposal, if you want to call it that, or if you don't want to call it that, a written form of agreement? Is there any dispute whether that happened or not?

(Testimony of Mark Holmes.)

Mr. Ball: I don't think there is any dispute. So far as I know, no written document purporting to be a contract with the Union, or a proposed contract, was ever prepared by the Company and given to the Union.

Trial Examiner Bokat: Is that agreeable?

Mr. Walker: Yes, that is agreeable. [179]

Trial Examiner Bokat: It is not decisive of anything, of course.

Mr. Ball: Let the record show that we object to any inquiry into such matters, although I made the statement as a statement of fact to clear the record.

Trial Examiner Bokat: Yes, your statement is on the record, and you object to the relevancy of any such questions. Let us proceed.

Q. (Mr. Walker) What occurred on the meeting of December 13?

A. Mr. Ashe, of the Federal Labor Conciliation Service was present at that time, and we discussed the point of how we could get together. The first question was whether we were going to get any counter proposals, and it was discussed again at that meeting.

Mr. Ball: I will object to this generalization of the witness, which can have no probative weight.

Trial Examiner Bokat: I am afraid that you are correct, Mr. Ball. I will have to sustain the objection.

Q. (Mr. Walker, continuing) Mr. Holmes, did Mr. Ashe take part in that meeting?

(Testimony of Mark Holmes.)

A. He did.

Q. What did he say?

A. He asked if there was some way that the company and the Union could get together on an agreement, and if the company would make a counter proposal. [180]

Q. Was that question answered? A. Yes.

Q. Who answered it? A. Mr. Powell.

Q. What did he say?

A. No; that the company had nothing to ask of the union; that the union was coming to the company for something, and not the company coming to the union.

Q. Did Mr. Landye take any part in the meeting?

Trial Examiner Bokat: Are you referring to December 13?

Mr. Walker: December 13.

A. Well, he wasn't there on the second meeting when Mr. Ashe was present.

Trial Examiner Bokat: I think the question was directed to the first meeting, December 13. There were three meetings, as I understand it, December 13, 14 and 16.

A. Yes, Mr. Landye was present.

Trial Examiner Bokat: On December 13?

The Witness: Yes.

Q. (Mr. Walker, continuing) Did he take part in the meeting?

(Testimony of Mark Holmes.)

A. Yes. He also asked for a counter proposal in writing of some kind.

Q. What was it that Mr. Landye said?

A. He asked if the company wouldn't give us a counter proposal.

Q. Was that answered? [181]

A. Yes.

Q. How was it answered, and by whom?

A. That was answered with a flat "No".

Q. By whom? A. Mr. Powell.

Mr. Ball: I move to strike the word——

Trial Examiner Bokar: Yes, strike the word "flat" out.

Mr. Ball: I will ask that the witness be instructed to state what was said, without conclusions.

Trial Examiner Bokar: Yes, state as near as you can what took place.

Q. (Mr. Walker, continuing) What discussion concerning the proposed agreement was had?

A. Just a general rehash of what we had gone through before.

Q. Was the agreement discussed by articles?

A. I believe some of them was, yes.

Q. Were comments relative to the articles made by any representative of the company?

A. None other than had been gone through before.

Mr. Ball: I move to strike that as a conclusion.

Trial Examiner Bokar: Yes.

(Testimony of Mark Holmes.)

Mr. Ball: Furthermore, let me call to the Examiner's attention that we are getting to matter that that is very repetitious.

Mr. Walker: If we are going to be limited to what was actually said and done, I would rather do it that way than skip [182] over it by a conclusion.

Trial Examiner Bokat: I understand your reason.

Mr. Walker: We will go through it clause by clause.

Trial Examiner Bokat: May be we can save time. Is it the Board's contention that what happened at the December 13 meeting with relation to the discussion of the articles, is the same as happened on the November 12 meeting? And that the respondents took the same position? I want to know if it is your contention that the respondent took the same position, or a different position.

Mr. Walker: I think it was the same day in and day out.

Trial Examiner Bokat: That is your contention?

Mr. Walker: Yes.

Trial Examiner Bokat: Let's see if the witness will testify as to the position that the company took at that time as compared with November 12.

Q. (Mr. Walker, continuing) Will you refer to your copy of the agreement. At the meeting of December 13, was there a discussion on Article 1?

A. I believe there was, yes.

(Testimony of Mark Holmes.)

Q. And what was said relative to that article, Article 1?

A. It was against company policy, and the company could not agree to it.

Trial Examiner Bokat: Article 1?

The Witness: No. The company agreed to it.

[183]

Trial Examiner Bokat: Listen to the question, and then answer it.

A. (Witness continuing) The company said it was a matter of record that we were recognized as the sole collective bargaining agency, but they saw no reason why it should be a part of the agreement.

Q. (Mr. Walker, continuing) Now, were each of the succeeding clauses of the agreement discussed at that meeting?

A. I think that we got through most of them.

Q. Did you meet again after that?

A. Yes, we met again the latter part of the week; later on in the week.

Q. The next day?

A. No; I think it was the latter part of the week, or a few days later.

Trial Examiner Bokat: It has been agreed that the next meeting took place December 13.

Q. (Mr. Walker, continuing) Were substantially the same individuals present at the second meeting as were present at the meeting of the 13th?

A. They were.

(Testimony of Mark Holmes.)

Q. Was there a form of agreement discussed at that meeting? A. There was.

Q. Were copies of the agreement before all the parties? A. I believe so, yes. [184]

Q. How did that meeting open up?

A. Well, I believe Brother Estabrook opened up the meeting by asking if the company desired to make any counter proposals, or discuss the proposed wage scale again.

Q. Was any reply given to that?

Mr. Ball: I move to strike the question out as to Mr. Estabrook's opening up the meeting and asking for counter proposals. I move to strike that on the ground that it is calling for a conclusion of the witness; that it is a matter that Mr. Estabrook has already testified to.

Trial Examiner Bokar: Will you read the last question and answer?

(Thereupon the question and answer referred to were read aloud by the reporter as follows:

“Q. How did that meeting open up?

“A. Well, I believe Brother Estabrook opened up the meeting by asking if the company desired to make any counter proposals or discuss the proposed wage scale again.”)

Mr. Ball: I object, further, on the ground that it is ambiguous.

Trial Examiner Bokar: I will let it stand.

(Testimony of Mark Holmes.)

Mr. Walker: Frankly, I don't see any ambiguity to it. I think that it's quite clear.

Trial Examiner Bokat: Proceed.

Mr. Walker: Now, Mr. Reporter, will you read the pending [185] question?

(Thereupon the pending question was read aloud by the reporter as follows:

“Q. Was any reply given to that?”)

Mr. Ball: I will object to that, for the same reason, Mr. Examiner, that I moved to strike the previous answer.

Trial Examiner Bokat: Same ruling. I will overrule it.

A. The reply was that the company had nothing to counter propose, that the union was coming to the company for something, and the company didn't have to propose anything.

Trial Examiner Bokat: Who said that?

The Witness: Mr. Powell.

Trial Examiner Bokat: Did he also state that on December 14; did you so testify?

The Witness: Yes.

Trial Examiner Bokat: The same as the day before?

The Witness: Yes.

Q. (Mr. Walker, continuing) Do you know Mr. Eugene Allen? A. Yes.

Q. Was he at the meeting? A. Yes.

Q. Did he take part in the discussion?

(Testimony of Mark Holmes.)

A. I don't believe that he did.

Trial Examiner Bokat: The record doesn't mean anything. It doesn't show who Mr. Allen is.

[186]

Mr. Landye: He is an executive officer of the Office Workers, I believe.

Mr. Ball: Mr. Allen was identified by Mr. Estabrook in the record, I believe.

Trial Examiner Bokat: All right, let us proceed.

Q. (Mr. Walker, continuing) Now, what discussion of the agreement took place at that meeting?

A. Practically the same discussion as had taken place at the other meeting.

Q. What was said concerning Clause No. 1 or Article No. 1?

A. I don't believe that we discussed that very much.

Q. Was Article 2 discussed at that meeting?

A. I believe it was.

Q. What was the discussion on Article 2?

A. He asked that the company, or if the company wanted to discuss Article 2, or to give us some kind of a counter proposal, and he said "no", that was absolutely out so far as company policy was concerned.

Q. What did you do after that?

A. I believe that was the meeting at which Mr. Ashe was present. He kind of took over the meeting and asked questions.

Q. You mean Mr. Ashe?

A. Yes.

(Testimony of Mark Holmes.)

Q. What did Mr. Ashe ask?

A. He just asked a few questions, trying to get some basis for [187] the settlement of the thing.

Q. Do you recall what he asked along the lines of determining what basis of settlement could be arrived at? A. No, I don't.

Trial Examiner Bokat: Off the record.

(There was a discussion off the record)

Trial Examiner Bokat: We will suspend for ten minutes at this time.

(Thereupon, at this time a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Bokat: The hearing will be in session. You may proceed when you are ready, Mr. Walker.

Q. (Mr. Walker, continuing) Will you indicate what discussion was had relative to Article 1 of the agreement at the time of the December 14 meeting?

A. I believe the company's position was the same as it was before.

Q. And what was that?

A. That they agreed, by winning the election, we were sole collective bargaining agent.

Q. But the comment relative to the wording as set out in Board's Exhibit 3 was the same as the comment made at the meeting of November 25; is that correct? A. Yes.

(Testimony of Mark Holmes.)

Q. Well, no. The meeting of November 12? [188]

A. Yes, it was.

Q. What was said relative to Article 2 at that meeting? Referring to December 14?

A. Same objection; against company policy.

Q. Now, was there any further discussion concerning the use of the phrase "company policy" at that meeting of December 14?

A. I believe we tried to find out just what the company policy was.

Mr. Ball: Oh, that should be stricken out. His statement that he believes this, that and the other thing, certainly is not proper. I have not objected, because it would slow up the proceedings. However, I would hate to have the record show that we concede that any of this is evidence on the issues, by not objecting.

Trial Examiner Bokat: Reframe your question.

Q. What was said concerning company policy at this meeting of December 14?

A. Well, the question was, we were trying to find out what the company policy was, and we were unable to do so.

Q. Did you ask any of the representatives of the company what the policy of the company was with reference to the full force and effect of a closed shop, or a union shop, or preferential hiring?

A. Mr. Powell,—

Mr. Ball: Just a minute. I move to strike the last question [189] and answer. I have reference

(Testimony of Mark Holmes.)

particularly to the answer of the witness when he said "we were unable to do so".

Trial Examiner Bokat: That is right.

Mr. Ball: Let it be understood that our objection runs against all such testimony.

Trial Examiner Bokat: You don't mean to imply by my agreeing to strike that, that I am striking all things out to which no objection was raised?

Mr. Ball: I am trying to not slow up the proceedings, but I don't want it considered, by not objecting, that we consider such evidence is of any probative value. There is a lot of testimony that has no probative weight, and I want it understood that we are objecting to any statement or statements of the state of mind of the union, or as to what the company's position was.

Trial Examiner Bokat: Let the record so show. What I want is to get at what was said and done. I will use my own intelligence in digesting the testimony.

Mr. Ball: Naturally, but we don't want the record to show that we waive any of our rights because we have not objected to any of the hundreds of times that something of that kind has been stated.

Trial Examiner Bokat: The record will show your objection. Proceed.

Q. (Mr. Walker, continuing) Did any of the parties representing [190] Local 206 ask any of the

(Testimony of Mark Holmes.)

representatives of the company what the policy of the company was relative to a closed shop, or a union shop, or a preferential shop? A. Yes.

Q. And what was asked along that line?

A. The question was asked what the company's position was on this closed shop, or union shop, and the company, through Mr. Powell, replied that if a man wanted to belong to a union, he could; and that if he didn't desire to do so, he didn't have to, and that they didn't want to do anything that would be understood as forcing the free choice of their employees.

They didn't want to be understood to be influencing the free choice in any way.

Q. Was there a discussion concerning the open shop?

A. I believe the company was asked if they would sign an open shop agreement, if they could make some adjustments of pay, or wages.

Q. Who said that?

A. Mr. Powell—Mr. Estabrook, I believe. Mr. Powell answered.

Q. What did Mr. Powell reply?

A. He said that at the time they couldn't give any wage increases.

Q. Did he say anything further after stating that the company could not make any wage increases? A. No, he did not. [191]

Q. Did he give any reasons for his answer?

A. He said that he felt that the company here

(Testimony of Mark Holmes.)

were paying as much as they were in competitive lines of business.

Q. What took place after Mr. Powell said that the company was paying as much as they were in competitive lines of business?

A. I think Mr. Estabrook and some of the representatives of the Retail Clerks said that they didn't think they were.

Q. Did Mr. Estabrook or the Retail Clerks give any reason why they thought that the company was not paying comparable wages?

A. Well, when the wage scale was read that was in effect, we knew that the other wage scales we have in effect were much higher than that.

Mr. Ball: I move to strike what the witness knew.

The Witness: Well, I do know, to my knowledge.

Trial Examiner Bokat: Yes, that may be stricken.

The Witness: I do know, so far as I am concerned, that the wage rates are higher.

Mr. Ball: I move to strike that out.

Trial Examiner Bokat: Yes. We are interested in knowing if that was said.

Mr. Walker: I think that we would save time if the Examiner would let it stand for what it was worth.

Trial Examiner Bokat: I can't do that if an objection is made, and there is merit to the objection. [192]

(Testimony of Mark Holmes.)

That is the point that counsel desires to make, that he doesn't want it to stand in the record, and if he is right, I will have to rule. I want the conversation rather than the thoughts of the witness.

Mr. Walker: May I have the question read which was answered, and the answer was stricken?

Trial Examiner Bokat: Will you read it, Mr. Reporter?

(Thereupon the question and answer were read aloud by the reporter as follows:

"Q. Did Mr. Estabrook or the Retail Clerks give any reason why they thought that the company was not paying comparable wages?

"A. Well, when the wage scale was read that was in effect, we knew that the other wage scales we have in effect were much higher than that.")

Q. (Mr. Walker, continuing) Was a wage scale read at this meeting?

A. At one of the meetings; I don't know whether you would call it a counter proposal, or whether it was just a wage scale that was read.

Q. What wage scale was it?

A. I don't understand your question.

Q. Whose wage scale was it?

A. It was Montgomery Ward & Company's wage scale; Montgomery Ward & Company was reading it to the union representatives. [193]

(Testimony of Mark Holmes.)

Q. Was it a scale of wages that Montgomery Ward were paying the employees at the time?

A. The question was asked Mr. Powell, and he said that was the wage scale that was being paid, and he said, in some cases that it was less.

Q. Had Local 206 membership in any other organization conducting a business comparable to Montgomery Ward & Company?

Mr. Ball: I will object to that as irrelevant.

Trial Examiner Bokat: I will let it stand as purely a preliminary question leading to something else. He may answer.

A. I would say "no".

Q. (Mr. Walker, continuing) Will you explain your previous answer?

A. I believe the name of Sears Roebuck has been mentioned, and we have a contract with them, but they are not in the mail order business here in the City of Portland.

Q. Was the matter of Sears Roebuck discussed in any of these meetings?

A. Not by myself.

Q. Did any of the representatives of the Union, Local 206, mention it?

A. I don't remember; I don't think so.

Q. Are there any businesses conducting warehouse businesses other than Montgomery Ward, situated in Portland?

Mr. Ball: I will object to that as irrelevant.

(Testimony of Mark Holmes.)

Trial Examiner Bokat: It will stand as a preliminary question.

The Witness: May I have the question again?

Mr. Walker: Will you read it?

Mr. Bokat: Read it back, Mr. Nelson, please.

(Thereupon the last question was read aloud by the reporter as above recorded.)

A. Yes. I would say there are many, many businesses in Portland conducting warehouse activities.

Q. (Mr. Walker, continuing) Has Local 206 membership among any other businesses conducting warehouses in Portland?

A. Yes, we have contracts with about 122 concerns that do warehousing.

Trial Examiner Bokat: In the Portland area?

The Witness: Yes.

Q. (Mr. Walker, continuing) What is the relative wage scale of other warehousing businesses in Portland as compared with the warehouse employees of Montgomery Ward & Company?

Mr. Ball: I will object to that as irrelevant to any issues in this case. It is not preliminary, and it doesn't tend to prove or disprove any issues, but merely calls for an opinion of the witness.

Trial Examiner Bokat: I will sustain the objection. I am not going to get into a dispute as to the wages paid in other concerns, unless the particular subject was discussed [195] at the meeting.

It has already been testified to that the representative of the company stated they were paying

(Testimony of Mark Holmes.)

as high wages as any other concern, which, the witness states, was denied by the union. Now, if there was any further discussion, let us develop it.

Q. (Mr. Walker, continuing) Was there any discussion as to whether or not the Montgomery Ward wages were comparable with other warehouses businesses in Portland, on December 14?

Mr. Ball: I will object to that as irrelevant.

Trial Examiner Bokar: Was there any discussion as to comparative wages other than what you have told us?

The Witness: No, there was not.

Q. (Mr. Walker, continuing) Did the representatives of Local 206 meet again with representatives of the company following the meeting of the 14th?

Trial Examiner Bokar: It has been agreed that there was a meeting on December 16.

Q. (Mr. Walker, continuing) Were the same parties present at December 16? A. Yes.

Q. And was the contract discussed at the meeting of the 16th? A. It was.

Q. Was the form of the contract present before all of the parties in the meeting? [196]

A. There was one before each party.

Q. Was Mr. Ashe there also? A. He was.

Q. What took place at that meeting of the 16th?

A. A general discussion of the agreement, and questions by Mr. Ashe if the company desired to make any counter proposals.

(Testimony of Mark Holmes.)

Trial Examiner Bokat: And was there any reply, if you know?

The Witness: Nothing else, other than what I have stated.

Q. (Mr. Walker, continuing) All right, what was said about the agreement itself?

A. At the meeting, I think the question came up whether or not the company would arbitrate the contract.

Q. How did that question arise?

A. Well, we were not getting any place on the agreement, as a whole, and we wanted to find some common ground to settle the thing, if possible.

Mr. Ball: I don't want to burden this record, but, again, I must move to strike the answer, because it calls for a statement of mind.

Trial Examiner Bokat: I am compelled to grant the motion.

Q. (Mr. Walker, continuing) What was said along that line?

A. Mr. Estabrook asked Mr. Powell if he would agree to arbitration, and Mr. Powell said "no". Mr. Estabrook then asked Mr. Powell if he would sign an agreement with the same hours, wages and working conditions as had been in effect previous to the [197] strike, and Mr. Powell said "no".

Mr. Walker: That is all. Just a minute.

Q. (Mr. Walker, continuing) You mentioned Mr. Ashe taking part in the meeting?

A. Yes.

(Testimony of Mark Holmes.)

Q. What did Mr. Ashe say in the meeting of the 16th?

A. Well, he took part in the general discussion of the agreement, as to how we were going to get together on it.

Q. And what was it that he said in that regard?

A. He just took part in the discussion; I don't recall definitely.

Q. Do you recall what he said?

A. No, I don't recall what he said; I can't remember now.

Q. Do you recall whether or not Mr. Ashe made any inquiry concerning the question of seniority?

A. Yes, the question of seniority was discussed.

Q. And what was the discussion concerning that?

A. The discussion was that we asked if they would agree to a clause that had seniority in it, and they then said "no".

Q. Did they state why?

A. They said there was so many things that entered into seniority besides length of service, that they could not agree to it as written.

Q. That is Article 9 of the contract, is that correct?

A. That is correct. [198]

Q. Did Mr. Powell indicate what other matters entered into the question of seniority?

A. Whether or not the person involved was married, or his adaptability to promotion, or the type of work that he was doing.

Mr. Walker: That is all.

(Testimony of Mark Holmes.)

Mr. Ball: The respondent requests of the Trial Examiner, that if Mr. Landye is going to be permitted to examine the witness, that he require the examination to be ahead of the examination of the respondent. In that way only can orderly procedure be preserved, and if Mr. Landye has anything to bring out, I can then take it up on cross examination.

Mr. Landye: I agree to that, I think that is quite proper to examine the witness before the respondent, and, to make it entirely fair, I won't ask the witness any questions.

Cross Examination

Q. (Mr. Ball) When you get into a meeting to negotiate with an employer, you go in with a contract that has been approved by the union?

A. We do.

Q. And if any material changes are to be made in the proposed agreement, you have the authority to sign it?

A. Not at that time.

Q. You would have to take it back to the membership?

A. It all depends on whether we have anything to take back. [199]

Q. But any material change, you would have to take that back to the membership?

A. If the change was made in writing and given to us, I think that that would be the procedure.

Mr. Ball: I move to strike the answer as not responsive.

(Testimony of Mark Holmes.)

Trial Examiner Bokat: Yes. Strike it.

Q. (Mr. Ball, continuing) You couldn't sign a contract on behalf of your union that involved any material changes, without going back to the membership?

A. We would not.

Q. That would be the practice of the union?

A. Yes.

Q. And what would apply to you would apply to Mr. Estabrook, also?

A. Yes.

Q. Now, altogether, the meetings that you spent with Montgomery Ward & Company took a good many hours?

A. Yes.

Q. As a matter of fact, you don't recall the exact words used in the framing of any question or answer?

A. That would be pretty hard to do.

Q. Your answers have been based mostly on your general recollection of the tenor of the conversations?

A. That is what I think that they would be based on, what I remember, yes. [200]

Q. You will recall that in the discussion of the contract, you testified that Mr. Estabrook asked Mr. Powell if he would sign a contract which embodied an open shop and the existing wage rate?

A. Yes, I believe that question was asked.

Q. You recall that Mr. Denecke asked you if your union would sign such a contract?

A. I don't recall that, no.

(Testimony of Mark Holmes.)

Q. You recall that the statement was made that your union would not sign such an agreement?

A. The statement was not made by myself, so I wouldn't know.

Q. It might have been made, so far as your present recollection is concerned?

A. I have a pretty good memory, but I don't remember that being made.

Mr. Ball: That is all.

Trial Examiner Bokat: Any redirect?

Mr. Walker: No.

Trial Examiner Bokat: The witness is excused.

(Witness excused)

Mr. Ball: May I recall the witness for one question?

Trial Examiner Bokat: Yes.

MARK HOLMES,

previously sworn, was recalled as a witness by and on behalf of the Board and further testified as follows: [201]

Cross Examination

(continued)

Q. (Mr. Ball) You recall that the question was asked of Mr. Powell about the signing of a contract or an agreement, and he said, "it is premature to discuss the final form of contract until we have agreed on all the terms"?

(Testimony of Mark Holmes.)

A. I don't remember Mr. Powell making any such statement.

Mr. Ball: That is all.

(Witness excused)

Mr. Walker: Mr. Dixon.

FRED DIXON

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Bokat: Give your full name and address to the reporter.

The Witness: Fred Dixon.

Trial Examiner Bokat: How do you spell your name?

The Witness: D-i-x-o-n (spelling).

Trial Examiner Bokat: Your first name is Fred?

The Witness: Yes.

Direct Examination

Q. (Mr. Walker) What is your official position?
A. Secretary-Treasurer.

Q. Of what?

A. Retail Clerks' Local 1257.

Q. Are the Retail Clerks affiliated with any national or [202] international?

A. Yes, the Retail Clerks' International Protective Association.

(Testimony of Fred Dixon.)

Q. And is the International affiliated with any other labor organization?

A. It is affiliated with the American Federation of Labor.

Q. When was Local 1257 chartered?

A. In the year 1917.

Q. Does the Retail Clerks' Union claim membership amongst the employees of Montgomery Ward & Company?

A. Yes.

Q. What classes of employees are eligible for membership in Local 1257?

A. What classes?

Q. Yes.

A. Do you want me to give a complete definition of the type of people that we take in?

Q. Yes.

A. We take people in selling and non-selling where they are engaged in the operation of a retail establishment. In non-selling, we claim people that are affected by the selling people, such as the service or more or less stock work in a retail establishment.

Trial Examiner Bokar: You say, employees, for example, who wrap parcels are eligible to membership in your organization? [203]

The Witness: Yes, in the retail.

Q. (Mr. Walker) By "selling", you mean such individuals as are commonly engaged in waiting on customers, displaying goods to them, and executing transfer of goods for sale?

A. Yes.

(Testimony of Fred Dixon.)

Mr. Ball: I suggest that the witness speak up, rather than nod his head.

A. (Continuing) Yes.

Q. (Mr. Walker) Does that same definition that you have just given relative to selling and non-selling apply to the Montgomery Ward establishment here in Portland? A. Yes.

Q. What classes of employees at the Montgomery Ward establishment are not eligible for membership in Local 1257?

A. You mean in the retail store?

Q. Yes.

A. They have watchmakers, tailors, supervisors, doormen. I can't think of all of them, but there are a large number of them not eligible to membership.

Trial Examiner Bokar: I would like to get them all.

Q. (Mr. Walker, continuing) In your answer, you referred to the retail store. Is your membership limited among selling and non-selling employees solely in the retail store division, or otherwise?

A. Yes, it is limited solely to that. [204]

Q. Are employees of other organizations members of your organization, in addition to employees of Montgomery Ward? A. How is that?

Q. Are employees of other organizations, in addition to Montgomery Ward, a part of the membership of Local 1257?

A. I still don't understand it.

(Testimony of Fred Dixon.)

Q. Is membership in 1257 limited to employees of Montgomery Ward only?

A. No. We have membership anywhere, wherever there is a retail establishment.

Q. In the City of Portland? A. Yes.

Q. In speaking of individuals who are eligible for membership, you mentioned supervisors. What do you mean by the term "supervisors"?

A. Generally, after entering into a contract, it is generally agreed upon between the union and the employer as to what constitutes a supervisor. In various cases, they have different interpretations of what a supervisor is, and we mutually agree upon the term as to who is a supervisor, after a contract is entered into. They are never the same in any two establishments in the country.

Q. When did Local 1257 begin organizing the employees of Montgomery Ward?

A. I couldn't say the exact date. It was around February or March [205] of 1940. We started jointly with Estabrook's.

Q. You mean Estabrook's organization campaign; is that what you mean? A. Yes.

Q. That is, Local 206 of the Warehousemen?

A. Yes.

Q. After beginning organization at Montgomery Ward, did you have occasion to contact any of the officials of Montgomery Ward? A. Yes.

Q. Who?

(Testimony of Fred Dixon.)

A. We had a meeting with Mr. Huddleston and Mr. Barth stating that we had started a campaign to organize the store. We approached them before the organizational drive started.

We informed them of our intention, that it was to be strictly on an honorable basis, and we asked what was going to be their position. They said that they were compelled by law to deal with us after we got 51 per cent, and that they would not do anything to in any way hamper the organization, and that after we got 51 per cent, they would have to deal with us. Of course, they stated that it would be up to us to notify them.

Trial Examiner Bokat: Do you intend to introduce any further proof along that line, Mr. Walker?

Mr. Walker: Yes. [206]

Trial Examiner Bokat: Otherwise, I have some questions of the witness.

Mr. Walker: Oh, yes.

Q. (Mr. Walker, continuing) How did you first notify the company representatives relative to the results of your organizational campaign?

A. Well, after we had obtained a majority of the employees, we had a general meeting of the employees, and we discussed what we would do, or should do.

We had drafted our agreement, and we were to determine what date we should notify the company, so we set the date as the 6th day of August; and we sent them a letter to that effect.

(Testimony of Fred Dixon.)

Q. Have you a copy of that letter?

A. Yes.

Mr. Ball: I move to strike that portion of the testimony that stated, "After we obtained a majority of the employees" or "51 per cent", because there is no proof of a majority. That is a conclusion of the witness.

Trial Examiner Bokar: The mere statement that they had a majority is not decisive, of course.

Mr. Ball: And may I add to my objection that it is a conclusion of the witness.

Trial Examiner Bokar: I think that you already stated that. [207]

Let it be understood that any reference of this and other witnesses that may be made generally about the Retail Clerks having a majority in the appropriate unit, is merely the claim of the union, and the statement will be received as such, subject to the actual proof that the union had the majority, the actual proof as against the claim of the union.

Mr. Ball: Thank you.

(Thereupon documents were marked as Board's Exhibits 4, 5 and 6, respectively, for identification.)

Mr. Ball: Let the record show that Board's Exhibits 4, 5 and 6, are copies of correspondence passing between the parties, and that Board's Exhibit 5 is the same as Respondent's Exhibit No. 4, marked for identification yesterday and not offered at that time.

(Testimony of Fred Dixon.)

Q. (Mr. Walker, continuing) Mr. Dixon, I hand you what has been marked as Board's Exhibit 4, and also what has been marked as Board's Exhibits 5 and 6, and I will ask you to state what they are.

Mr. Ball: Why don't you introduce them into evidence and we will have no objection.

Trial Examiner Bokat: If counsel has no objection to their introduction, it obviates the necessity of laying a foundation.

Mr. Walker: Without further identification, on agreement between counsel that they may be received in evidence without further identification, I will offer in evidence what have been [208] marked as Board's Exhibits 4, 5 and 6.

Trial Examiner Bokat: They will be received in evidence.

(Whereupon the documents heretofore marked, respectively, Board's Exhibits 4, 5 and 6 for identification, were received in evidence.)

BOARD'S EXHIBIT No. 4

[Copy]

August 6, 1940

Montgomery Ward & Co.
Portland, Oregon
Attention Mr. E. L. Barth

Dear Sir:

This is to notify you that we have at the present time a large majority of the Retail Clerks employed

(Testimony of Fred Dixon.)

in your store, that have signified by their applications that we are to represent them as their Collective Bargaining Agent.

In view of the above, we request that at your earliest convenience we meet to discuss and negotiate a mutually satisfactory Agreement, covering Hours, Wages, and Working Conditions for this group.

Thanking you for an early reply, we are,

Very truly yours

RETAIL CLERKS LOCAL No. 1257

FRED DIXON,

Sec'y & Business Rep.

(Seal)

FD/lb

BOARD'S EXHIBIT No. 5

[Copy]

Montgomery Ward

Portland, Oregon

August 12, 1940

Mr. Fred Dixon

Retail Clerks, Local Union #1257

404 Labor Temple

Portland, Oregon

Dear Mr. Dixon:

This will acknowledge your letter requesting a meeting with me. I shall be glad to arrange for

(Testimony of Fred Dixon.)

discussion of any subjects in which you may be interested at any time that is mutually convenient.

Yours very truly,

MONTGOMERY WARD & CO.

(Signed) E. L. BARTH

Retail Store Manager

B:N

BOARD'S EXHIBIT No. 6

[Copy]

October 2nd, 1940

E. L. Barth, Local Manager

Montgomery Ward & Co.

2741 N. W. Vaughn Street

Portland, Oregon

Dear Sir:

As you know, the Retail Clerks Union, Local 1257, represents an overwhelming majority of your employes engaged in retail selling in your retail store at Portland, Oregon, also the Office Employees Union, No. 16821, represents a great majority of your office workers in the retail store.

This is to notify you that we are willing to negotiate a contract for the entire retail store. We are agreeable that the negotiations cover the office workers as well as the retail clerk's that one contract be signed covering the entire retail store, and that such contract will be negotiated by both unions in-

(Testimony of Fred Dixon.)

volved at one time, and if an agreement can be reached it will be signed by both unions involved.

Yours very truly,

RETAIL CLERKS UNION

LOCAL 1257

FRED DIXON,

Secretary

OFFICE EMPLOYEES UNION

LOCAL 16821

HOWARD HICKS,

Secretary

FD:HH:JS

Mr. Ball: It is, of course, understood that, in our not objecting, we do not accept the probative effect of the evidence other than the fact that the letters were written.

Trial Examiner Bokat: Of course.

Q. (Mr. Walker, continuing) After receiving the letter from the company, dated August 12, did Local 1257 do anything? A. Yes.

Q. What?

A. We contacted Mr. Barth by telephone and asked him to arrange a meeting where we could get together and discuss the contract.

Q. Were arrangements made?

A. Yes, he arranged for a meeting. I don't recall the exact date. He was to arrange a meeting

(Testimony of Fred Dixon.)

with Mr. Powell, and then he was to notify me of the date that Mr. Powell could be here, and where we were to meet.

Q. Did he later interview you again?

A. Yes, he did.

Q. Did he notify you of Mr. Powell coming here?

A. Yes. [209]

Q. And did you later meet?

A. Yes.

Q. When was that meeting?

A. It was in September; I don't recall the exact date.

Q. September 19?

A. Yes, I believe so.

Q. Where?

A. In the New Heathman Hotel,—no, the Heathman Hotel.

Q. Did anybody accompany you?

A. Mr. Landye.

Q. With whom did you meet?

A. An attorney of Montgomery Ward & Company from Oakland, Mr. Powell,—a Mr. Barr.

Mr. Ball: In order that the record may be correct, the Mr. Barr referred to by the witness is Mr. J. P. Barr, and he is not an attorney, but is a regional office representative of the company at Oakland, and is not the same Mr. Barr who is a representative and counsel for our company from Chicago.

(Testimony of Fred Dixon.)

Mr. Landye: That is correct.

(Whereupon a document was marked as Board's Exhibit 7 for identification.)

Q. (Mr. Walker, continuing) In your previous answer concerning the conversation with Mr. Barth, you mentioned a contract. Will you refer to what has been marked as Board's Exhibit 7 for identification and state what that is? [210]

A. It is a contract with Montgomery Ward & Company.

Q. When was it submitted to the company?

A. Oh, I couldn't say exactly. I had it delivered by messenger. I would have the date up at the office. I called the messenger and had it delivered to Mr. Barth.

Q. Approximately when was that?

A. It was in August sometime.

Q. August?

A. The latter part of August.

Q. 1940? A. Yes.

Q. When was the form of agreement first formulated or drawn? A. In July and August.

Q. Now, what occurred at the meeting at the Heathman Hotel on September 19?

A. On September 19, we opened up the meeting after discussion about getting acquainted, and who represented who, and we started out and gave copies of the contract to all parties present at the meeting.

And immediately after the meeting started, why

(Testimony of Fred Dixon.)

Mr. Powell brought up the point that they reserve the right to go into negotiations or discussions,—however, he stated that at a later date he would reserve the right to question us whether or not we did represent a majority or not. At that point, I immediately brought up the fact that, when we go into negotiations [211] with employers, the first thing to be determined before we go into negotiations and before we can negotiate for any working agreement, it must be conceded that we have a majority. If the company says that we do not represent the majority, then that point has to be determined first before we start negotiations.

And after a long discussion on it, Mr. Landye and myself made three proposals to determine that question: to either hold an election or to get an outsider to audit the payroll against our membership, or they could accept us by the letter that we had sent them stating that we had the majority, or that we represented the majority.

Q. Now, after that meeting, or after the meeting at which that matter of the three alternatives was discussed, did you again hear from Mr. Barth?

A. Yes. The only thing is that, after this meeting broke up, when we adjourned at this meeting, they were to notify us as to what position they wanted to take, whether they wanted an election or whether they wanted a certification by the National Labor Relations Board to check the payroll, or to accept it; and they were to give us an answer.

(Testimony of Fred Dixon.)

Q. And did they say that they would later give you an answer?

A. Yes, they said that they would give us an answer.

Q. And did you later get an answer?

A. Well, they sent us a letter requesting that we could bargain [212] for the entire unit.

Trial Examiner Bokar: What unit are you referring to?

The Witness: The unit as a whole. That, if we could bargain for the unit, including the office workers; at that time, I stated that we had no right to bargain for the officer workers, because they were a different organization, and we had no right to deal for the office employees; however, we agreed at this meeting that I would try to persuade the office workers to give us the right to bargain, with the understanding that they still belonged to that union; and then they asked us to give them a letter in writing as to that; which we did.

Q. Well, now, at the close of that meeting, the representative of the company was to notify you as to which one of the three proposals they would agree to; is that correct? A. Yes.

Q. And were you later notified which one of the three proposals was agreeable?

A. No. I was notified by telephone that they were arranging for another meeting, and I asked them if that point was clear.

Q. Who was it that you asked?

(Testimony of Fred Dixon.)

A. Mr. Barth; and I talked with Mr. Barth on the telephone, and he asked about arrangements for this other meeting, and he made arrangements for the time, and we met in the Heathman Hotel. There were Hicks, the Office Workers' Representative, and Max Langford, our International Representative. At that meeting, [213] I asked them if they would accept our letter.

Q. That is the letter of October 2, 1940?

A. Yes.

Trial Examiner Bokat: That is Board's Exhibit 6.

Let's see if I can get the sequence of events more clearly in mind, if you don't mind, Mr. Walker.

Mr. Walker: That is all right.

Trial Examiner Bokat: You met with certain representatives of the Company on September 19?

A. That is right.

Q. (Trial Examiner Bokat) At which time the question of the Union's majority was discussed, is that right? A. Yes.

Q. And the union made three proposals?

A. Three proposals as to the way that they could determine the majority.

Q. When you say "election", were you referring to a consent election under the auspices of the Labor Board? A. Yes.

Trial Examiner Bokat: Is that the kind of election that you were referring to?

The Witness: Yes.

(Testimony of Fred Dixon.)

Trial Examiner Bokat: You say that you received a reply to the proposals by telephone after the September 9 meeting?

The Witness: Yes.

Trial Examiner Bokat: From Mr. Barth? [214]

The Witness: Yes.

Trial Examiner Bokat: About when did you receive the telephone call?

The Witness: I couldn't say exactly. I could check back.

Trial Examiner Bokat: Well, approximately. Was it a week or two after this meeting of September 19, or a few days after that?

The Witness: Well, it was in the latter part of September when I got the reply.

Trial Examiner Bokat: What was the reply? I want you to clarify that for me.

The Witness: Mr. Barth said that would have to be taken up with Mr. Powell, and he wanted to arrange for a meeting.

Trial Examiner Bokat: For another meeting?

The Witness: Yes.

Trial Examiner Bokat: On the three proposals?

The Witness: Yes, to determine whether we had a majority or not.

Trial Examiner Bokat: Was that meeting arranged?

The Witness: It was arranged.

Trial Examiner Bokat: When did it take place?

(Testimony of Fred Dixon.)

The Witness: It took place in October. I don't recall just the date.

Mr. Ball: The meeting at which Mr. Hicks, Mr. Langford, Mr. Dixon, Mr. Barth and Mr. Powell were present, took place [215] October 22. Can we settle that for the record?

The Witness: Yes, I believe that is right.

Trial Examiner Bokat: When did this suggestion originate, the question of including the office workers and the retail clerks into one unit; when did that come up?

The Witness: The Company requested that we get permission to represent the office workers in unit, so that there would be one organization to sign the contract for the entire unit.

Trial Examiner Bokat: Where would the majority be determined? Would it be determined in the larger unit, or was it to be determined separately for the Retail Clerks and separately for the Office Workers?

The Witness: Both were separate.

Trial Examiner Bokat: That was the understanding reached by the parties, or between the parties?

The Witness: Yes.

Trial Examiner Bokat: That the majority would be determined separately in each of the so-called units?

I want to get that clear.

The Witness: I want to get my position clear, too. We were only speaking for our people, but the

(Testimony of Fred Dixon.)

company suggested that we bargain for both parties. And the Office Workers had a majority of the office workers in the retail establishment at that time. The company asked us to get permission for [216] us to deal for the office workers in collective bargaining.

Trial Examiner Bokat: Now, with reference to the three alternatives in proving the majority, that related solely to the Retail Clerks?

The Witness: That is right.

Trial Examiner Bokat: Proceed.

Q. (Mr. Walker, continuing) When Mr. Powell referred to the retail store, in what manner did he describe the store? As a whole?

A. He described it as a unit, and everything in the retail store was one unit.

Q. When you have used the word "unit", in what sense have you used it? Have you used it in a quotation of Mr. Powell's?

A. Yes, in a quotation of Mr. Powell's.

Q. What discussion did you have relative to the jurisdiction of the Office Workers and the jurisdiction of the Retail Clerks?

A. Will you repeat the question?

Q. Previously, in your direct examination, you stated that you explained to Mr. Powell to what extent the Retail Clerks claimed representation, and what the difference was between the Retail Clerks and the Office Workers. Now, will you state what you said to Mr. Powell in that regard?

(Testimony of Fred Dixon.)

A. I stated to Mr. Powell that we represented, so far as the Retail Clerks were concerned, at least 85 per cent. of the people [217] in that unit, and that the Office Workers, to my knowledge, were 75 per cent. if not better, organized in the retail store. And then they asked us if we would not go and get the permission of the Office Workers, and then send them a letter that we had the right to bargain for those people. Then, of course, we suggested that we adjourn the meeting and we try to do that, if they was what they wanted. Mr. Powell agreed that we should go back and do that, and then let them know later.

Q. You stated to Mr. Powell that you represented 85 per cent. of your people?

A. Yes.

Q. Was there any discussion about the kind of people that you represented?

A. Yes, I stated the type of people that came under our jurisdiction.

Q. What was it that you told him?

A. Sales people and non-selling people that came under the category of our International Constitution.

Trial Examiner Bokar: At this time we will recess for lunch until 1:10 p.m.

(At 12:10 p.m. hearing recessed until 1:10 p.m.)

[218]

(Testimony of Fred Dixon.)

Afternoon Session

(Whereupon, at 1:15 p.m. the hearing was continued, pursuant to the taking of noon recess, as follows:)

Trial Examiner Bokar: The hearing will please come to order.

Q. (Mr. Walker, continuing) Mr. Dixon, I don't recall whether you have testified to this or not. But will you state whether or not a form of Board's Exhibit 7,—that is the agreement,—was delivered to any of the representatives of Montgomery Ward & Company?

A. Was it delivered to any of the—yes, it was delivered by messenger in August to Mr. Barth.

Trial Examiner Bokar: Barth, that is spelled B-a-r-t-h? (spelling)

The Witness: Yes.

Trial Examiner Bokar: Let's proceed.

Q. (Mr. Walker continuing) Now, at this meeting in the Heathman Hotel on September 19, was there any discussion about entering into an agreement of any kind?

A. That is the first meeting we had? You are referring to the first meeting?

Q. Yes.

A. Well, at that time,—as I said previously—they questioned the representation, whether we represented the majority or not. [219]

Q. Yes.

(Testimony of Fred Dixon.)

A. And I told them I could not discuss a contract with people unless they accepted our organization, that we represented the majority. We couldn't deal with people that,—didn't know who we were dealing for. Either the company had to accept or reject us so we could figure what our next move would be. It went on for several hours, and Mr. Landye and myself kept selling the point that they could use either of the methods I have described before of determining whether we represented the majority or not.

Q. Now, was any inquiry made as to whether or not it was possible to reach any agreement on any question?

A. Well, I recall of asking Mr. Powell that if we did reach an agreement with them, were they in a position to sign an agreement; and he told me that they didn't sign any agreements; and I stated that we had retail stores that I was confident that had signed agreements,—with Montgomery Ward & Company,—and he stated to his knowledge that they had no signed agreements, that they never signed any agreements.

Q. Was there anything else took place at that meeting of September 19th?

A. Oh, there took place this,—trying to bargain for these other people, the Office Workers,—it went on with a lengthy discussion about them. I said we should get the Office Workers to consent to come in

(Testimony of Fred Dixon.)

and join negotiations [220] with us and finish the unit at one time.

Q. Was that done?

A. That was done, yes. We sent them a letter jointly with the Office Workers and the Clerks, stating that we would negotiate jointly with the Office Workers and the Retail Clerks.

Q. Now, that letter that you have just referred to is the one marked Board's Exhibit 6, dated October 2, 1940? A. Yes.

Q. After delivering that letter to respondent, did you have any further contact with them?

A. Before I answer that question, I would like to go back on about this bargaining. We set a date when they were to reply to us whether they accepted us or rejected us on the terms that we proposed,—we met on the 19th and set the date as Monday the 23rd and we asked them,—they should be able to get together in a couple of days,—and Powell agreed, and Barth, that Monday the 23rd would be satisfactory; they would have an answer to us by that time.

Q. This discussion took place during the course of the meeting of the 19th? A. Yes.

Q. Go ahead.

A. What was the question you just asked?

Q. What occurred on the 23rd, if anything?

[221]

(Testimony of Fred Dixon.)

A. I called up Mr. Barth to find out what the company's answer was, and he wanted to know if I was able to get that letter to them,—by these Office Workers,—and I said, “Yes”, we was mailing this letter to him. He said as soon as he received that letter he would forward the letter right to Mr. Powell, who would be the man that would answer us.

Mr. Ball: That letter being Exhibit,—

Mr. Walker: 6.

Trial Examiner Bokat: Board's 6.

Q. (Mr. Walker, continuing) Did you subsequently receive any word from Mr. Powell concerning that letter of the 2nd of October?

A. I didn't receive any from Powell. I received a telephone conversation from Mr. Barth.

Q. About how long was that after October 2nd?

A. Oh, I would say, roughly speaking, a week or ten days.

Q. What did Mr. Barth tell you?

A. He said that he had either a letter or a telephone conversation with Mr. Powell and that he was in Southern Oregon,—he would be in Southern Oregon or some part of the state,—and he wanted to arrange for a meeting to be here in October. He wanted to know if the date was satisfactory to me, and I said anytime was satisfactory to me, as long as we knew what time we were going to meet. At a later date, why, he said he would call me up on the exact date and the place where we will [222]

(Testimony of Fred Dixon.)

meet; and he later called me up and arranged for this meeting in October in the Heathman Hotel.

Q. Between the conversation of September 23rd and the actual convening of the meeting of October 22nd, did you hear anything further from either Mr. Barth or Mr. Powell about the letter of October 2nd? A. No, I didn't.

Q. Now, where was your meeting held in October?

A. The meeting was held in the same room in the Heathman Hotel,—I don't recall whether it was the same room or not,—but the Heathman Hotel.

Q. Who represented the Unions at that time?

A. I represented the Clerks, and Langford, our International representative, was with us; Howard Hicks of the Office Workers was there.

Trial Examiner Bokat: How do you spell it? H-i-c-k-s?

The Witness: H-i-c-k-s (spelling). And Barth represented Montgomery Ward, and Mr. Powell.

Q. Was a form of Board's Exhibit 7 before the parties at that meeting?

A. Contract, yes.

Q. Will you relate, in your own words, what took place at that meeting?

A. Well, as soon as we got started I asked Mr. Powell if the letter that we had sent to them was satisfactory, were they [223] ready, at this time, to accept us and go into negotiations. Mr. Powell said, "At this time we accept that you do represent the

(Testimony of Fred Dixon.)

majority and we are ready to continue in negotiations.”

Q. What letter were you referring to?

A. The letter that Howard Hicks and myself sent.

Q. What happened after that?

A. Then we started in on the contract.

Q. How did you go about discussing the contract?

A. We got into the first paragraph of the contract and we got stuck.

(Discussion off the record.)

Q. (Mr. Walker continuing) What was said about the first clause of the agreement?

A. The first,—as we refer to it as section,—the first section of the agreement.

Q. The one that is marked Section 1?

A. Yes.

Q. All right.

A. Where it proves that the employer shall be entitled to hire any employee with the understanding that, after a certain length of time, if they are not members of the union, the company agrees that they shall become members if they are satisfactory to the employer and to the union. Mr. Powell said he could not agree upon anything like that, because it was contrary to company policy; that they weren't going to compel [224] anybody to belong to a union in order to have employment with Montgomery Ward & Company. I took up the argument that they had various things that were contrary to

(Testimony of Fred Dixon.)

whether the employees wanted to belong to them, but they had to in order to hold their job. We had contracts with all employers having the same clause, and we have no difficulty with the employers concerning that section. I related to Mr. Powell about various things that they compelled their employees to take out, whether they actually wanted to or not, and they weren't concerned about their employees on that. That was company policy, and why couldn't they make this company policy. Mr. Powell said that they absolutely couldn't go for it; at least, they wouldn't go for it at that time. So I asked him if he was in a position to give us a substitute for that, and he said, "No," he would not give us a substitute; and I said, "After all, if we get stuck on any of these things, we either have to be in a position to modify them and take them back to the people and——

Q. (Interposing) What people? What do you mean?

A. The people I represent, the employees. I asked him to submit us a counter proposal, seeing we were getting stuck. And I noticed that their copy was all written over with pencil with rejections noted. I stated that I would like the company to sit down and give us a proposal; that we weren't getting anyplace. Give us a proposal we could take back and [225] call a meeting of the employees and see how far they would go in accepting the various proposals the company would make.

(Testimony of Fred Dixon.)

Mr. Ball: Just a minute. I move to strike out the answer of the witness on the ground that it states opinions and conclusions of the witness, especially that portion that relates to the words "counter proposal", as the context of his answer and the meaning of these specific words here used is not clear; and the words involve a conclusion of the witness.

And for the further reason that commenting about what he saw on the copy of the contract in the hands of the respondent is also an opinion and conclusion of the witness.

Mr. Walker: May I ask one question before you rule on it?

Trial Examiner Bokar: Yes. Go ahead.

Q. (Mr. Walker, continuing) What you have just now related, is that what you stated during the course of the meeting? A. Yes.

Trial Examiner Bokar: Who did you say it to?

The Witness: Mr. Powell.

Trial Examiner Bokar: Did you say to Mr. Powell that you noticed that the contract in the possession of Mr. Powell had rejections on it?

The Witness: I stated to him that it was all penciled. It looked like the articles that we had submitted were either to be modified,—I thought if it was so many objections or [226] modifications in it, we would like to have a counter proposal.

Trial Examiner Bokar: Did you use the words "counter proposal"?

(Testimony of Fred Dixon.)

The Witness: Yes.

Trial Examiner Bokat: I think that you have run a little ahead of your story, because you seem to refer to all the articles, when, as a matter of fact, the question was merely directed to Section 1.

The Witness: Section 1 is where we got stuck to begin with. That is as far as we got at that time.

Trial Examiner Bokat: That is as far as you got at that time?

The Witness: Yes, that is as far as we got at that time.

Trial Examiner Bokat: In view of the further answer of the witness, I will let his testimony stand.

As I say again, it is very difficult to separate some of the conclusions, which, I admit, the witness did throw into his answer, from the fact. I will give due weight to all of the testimony.

Mr. Ball: It is understood my objection applies to all the answers that he gave in amplifying the original answer, or, rather, the questions?

Trial Examiner Bokat: Yes.

Mr. Ball: And a further objection should be entered to that line of questioning as incompetent and irrelevant, not [227] tending to prove or disprove any of the issues in this case.

Trial Examiner Bokat: Overruled.

Q. (Mr. Walker continuing) In the course of your previous answer you related that you mentioned to Mr. Powell various things that were required to be done by the employees. What were the various things that you mentioned?

(Testimony of Fred Dixon.)

A. I don't quite,—

Q. All right. In the course of your previous answer you stated that Mr. Powell expressed the thought that Section 1 of the agreement was not acceptable because it would require their employees to take membership in a union. To that you stated to Mr. Powell that there were many things that the company required the employees to do which they may or may not have wanted to do. Now, what were some of the various things required to be done by the employees that you mentioned to Mr. Powell?

A. Well, I stated that they have set-ups where the men must take out insurance, whether he wants to or not, to be employed by Montgomery Ward; that he must subscribe to sick benefits, whether he desires to subscribe to it or not,—a matter of policy with the company,—in order to be employed by the company; that they must take out these various policies or the company won't employ them.

Mr. Ball: May I point out again to the Examiner, I think we are getting on matters that are entirely collateral. Just [228] for the sake of the record, I move to strike the witness' answer on the ground that the matters referred to have no tendency to prove or disprove any of the issues in this case.

Trial Examiner Bokar: That may be true, but I will let it stand. It is very difficult for me at this time to determine whether what conversation took place will aid me in determining whether or not

(Testimony of Fred Dixon.)

respondent refused to bargain collectively in this case. I will have to let it stand, at this time.

Q. (Mr. Walker continuing) What you have just now related, was that something you said during the course of negotiations on October 22nd?

Trial Examiner Bokat: There is no question about it.

Mr. Walker: There seems to be a question.

Trial Examiner Bokat: Objection is made, even though it was said, it is immaterial.

Mr. Walker: What difference does that make?

Trial Examiner Bokat: It makes a lot of difference. It is very true a lot of these negotiations and transactions may or may not aid the Board in determining whether respondent bargained collectively; but it is too early for me to determine whether that particular testimony to which objection was made is relevant or not. I am letting it stand in the meantime.

Q. (Mr. Walker continuing) Now, were there any other sections of the agreement discussed at that meeting? [229]

A. No, there wasn't.

Q. Have you related all of the discussion that took place relative to Section 1 of the agreement?

A. No. We went on for about seven hours.

Q. What else was said in addition to what you have already related?

A. Well, we went right through the history of

(Testimony of Fred Dixon.)

our relations with employers that were working under that section.

Q. What was said in that regard?

A. Well, we offered to substantiate proof—to bring about proof of various employers that had worked under there. We didn't compel an employee to become a member if his religion or something prohibited him from becoming a member of organized labor. We worked that problem out between the employer and the party involved and the union. I cited various cases we had run into where their religion prohibited them belonging to the union. We worked it out with the employer. I was willing to produce those employers as witnesses to state our case. I said that we weren't iron clad on it. We wanted it to be a matter of policy. We were lenient if there was any case like that, as where Mr. Powell stated, "We might have some employees that would object to it." That problem,—we have always been able to iron that out since 1917, since our organization has been in existence.

Q. Did Mr. Powell say anything to that? [230]

A. No,—I don't recall exactly, if he did or not.

Trial Examiner Bokar: How did the meeting wind up?

The Witness: The meeting wound up at night, about 6:30, or somewhere around that neighborhood, with Powell, and Mr. Barth, and myself being present at the meeting; the rest of the boys had gone home. They had to leave for some other appoint-

(Testimony of Fred Dixon.)

ment, or something. We wound up that night with the understanding that Barth and Powell would get together and consider the proposition of giving us this counter proposal.

Trial Examiner Bokat: Merely on Section 1, or on the entire proposed contract?

The Witness: On the entire proposed contract.

Trial Examiner Bokat: Had you asked for a counter proposal on the entire contract, or merely on Section 1?

The Witness: Yes; so we would have some way of knowing what our differences were, so we could start from there instead of trying to work and not knowing exactly how far apart we were. That was just the procedure with our unions. If we could not get started with the contract, automatically the employer gave us a counter proposal, and you work from there on.

Trial Examiner Bokat: You asked for a counter proposal, you say, and Mr. Powell and Mr. Barth told you they were considering whether to submit a counter proposal or not?

The Witness: Yes.

Trial Examiner Bokat: Proceed. [231]

Q. (Mr. Walker continuing) Now, in the course of discussing whether or not a counter proposal would be delivered to you, did you tell Mr. Powell of the previous practice of your organization, as you related it in your previous answer?

A. Yes.

(Testimony of Fred Dixon.)

Q. Did you have any further contact with either Mr. Powell or Mr. Barth after that meeting?

A. Yes. I called Mr. Powell at the Heathman Hotel,—

Q. (Interposing) When?

A. I don't recall whether it was the following day, but I know that he was leaving town. You probably would have the dates better than I would. He was just leaving town; just leaving the hotel, in fact. They paged him from the lobby and called him back to the 'phone. He told me a cab was waiting outside for him, and that he would call me back from the airport, which he did.

Q. Did you talk to him at that time, from the airport? A. Yes.

Q. What was said?

A. I was talking on that counter proposal.

Q. What did you say?

A. I asked him,—in fact, I had to clarify my position as to what we meant by a counter proposal.

Q. What did you say to him?

A. I told him by counter proposal,—we had submitted our [232] contract; they had a copy of our contract,—if there was any difference in the contract, they felt they could offer us some exchanges in what we were asking, if they would sit down and work out a contract that they felt they could operate under, and submit to us that counter proposal; and we would call a meeting of our people and see how far we could get with that contract.

(Testimony of Fred Dixon.)

Q. Did he say anything?

A. Well, he said he would give it consideration, and that he would keep in touch with Mr. Barth.

Q. Was that all of that conversation?

A. Yes. His plane was leaving, so he had to go to the plane.

Q. Did you hear from Mr. Barth after that?

A. I called up Mr. Barth several times; we had various telephone conversations,—I don't recall all of them. We kept in contact there about every other day.

Q. Did you hear,—

A. (Interrupting) I tried to find out whether we could arrange for another meeting, or if they could get this counter proposal to us.

Q. Did you hear from Mr. Barth again concerning the requested counter proposal? A. No.

Q. Did he inform you at all what decision had been reached by Mr. Powell? [233]

A. No, he didn't.

Q. Did you meet again with the representatives of the company following October 22nd?

A. No. I never met at all until after the strike. I would like to state that,—

Q. (Interrupting) Were you,—excuse me. Go ahead.

A. I forgot what I was going to say, now. Oh,—Mr. Powell made the statement, when I asked him for a counter proposal, that he could not see why they had to give us a counter proposal, because

(Testimony of Fred Dixon.)

they weren't asking anything from the union while the union was asking from them. He couldn't see any sense in them giving us a counter proposal.

Trial Examiner Bokar: When did he say that?

The Witness: At the course of this meeting on the 23rd,—the second meeting we had.

Trial Examiner Bokar: That was on October 22nd.

The Witness: Over the telephone from the airport, too.

Trial Examiner Bokar: The same thing?

The Witness: He referred to the same thing, our insisting on a counter proposal.

Q. (Mr. Walker continuing) Did you say that you did not have any more meetings until the meetings of December?

A. I kept in touch with Mr. Barth. I wanted to know why we couldn't have another meeting, and Mr. Barth,——

Q. (Interrupting) You mean, you asked him?
[234]

A. Yes. He said he was trying,—in fact, he had been in contact with Mr. Powell, either by long distance or by letter, I don't recall which it was.

Q. Did he tell you,——

Mr. Ball: (Interrupting) Just a minute. I move to strike out the answer of the witness unless he fixes a date more specifically. It is a general statement which we can't cross examine on.

(Testimony of Fred Dixon.)

Trial Examiner Bokat: Will you read the last question and answer, Mr. Reporter?

(Whereupon the last question and answer referred to were read aloud by the reporter as above recorded.)

Trial Examiner Bokat: When did these conversations take place with Mr. Barth?

The Witness: I have my records, if I can refer to them.

Trial Examiner Bokat: You certainly can.

(Whereupon witness steps down and returns to the witness stand with a notebook.)

The Witness: My records show we met with the company on October 22nd, and from that time on,—I called up Mr. Barth to find out whether we could have another meeting; and then I didn't hear from them until November 12th at 5 o'clock. Mr. Powell called me up.

Trial Examiner Bokat: Now, let's see if I can get this straight. [235]

Mr. Ball: Let the record show that Mr. Dixon took something like four and a half minutes by the clock, looking over a short calendar which contains about five days' records on a page.

Trial Examiner Bokat: I don't know what the pages contain. He has, certainly, a memorandum pad in front of him, which he has been consulting for approximately five minutes. The record will show that, of course.

(Testimony of Fred Dixon.)

Now, let's see if I can clarify this in my own mind. You testified that after the October 22nd meeting,—just a few days thereafter,—you had a telephone conversation with Mr. Powell. Mr. Powell was taking a trip, and his cab was waiting for him outside. He said he would call you from the airport, which he did. Can you, by looking at your notes, refresh your recollection as to when that conversation took place?

The Witness: That was after our 22nd meeting, in October.

Trial Examiner Bokar: Yes, I know. But how long after? If you have any note about that particular conversation,—

The Witness: That was on the day,—he left the following day.

Trial Examiner Bokar: It was the following day?

The Witness: Oh, yes. Either that day, or the following day,—I don't recall. It had to be the following day, because it was about 7 o'clock when the meeting broke up. It was in the afternoon when he called me up the next day. [236]

Mr. Ball: The fact is, it was the following day?

Trial Examiner Bokar: All right. You say, then you had several telephone conversations with Mr. Barth, in which you requested another meeting. Is your answer still the same after looking at your notes? That you had several conversations, or had only one?

The Witness: No, I had several.

(Testimony of Fred Dixon.)

Trial Examiner Bokat: You mentioned only one specifically after looking at your notes.

The Witness: I would call Barth, and Barth would not probably be in, and he would return my call, and finally we would get together. We don't keep track of all our telephone calls. We do keep track of our meetings. I recall at least half a dozen telephone conversations between that last meeting and November 12th, when Mr. Powell called me up, talking with Mr. Barth, trying to find out what was going to be the answer of the company; if they were going to give us a counter proposal or not.

Trial Examiner Bokat: What did Mr. Barth say in that telephone conversation?

The Witness: He said he was without authority to do anything; that it was in the hands of Mr. Powell; and that he was trying to get Mr. Powell in here.

Trial Examiner Bokat: You say then on November 12th Mr. Powell finally called you? [237]

The Witness: He called me at 5 o'clock.

Trial Examiner Bokat: What happened when he called you? What was said by you and what was said by him?

The Witness: He called me and said he had just come to town and he would like to have a meeting with us; he had just met with Mr. Estabrook,—he was through meeting with Mr. Estabrook and he wanted to meet with me. I told him, I said it was impossible for me to meet with him right at that

(Testimony of Fred Dixon.)

time. I said, "If I had known you was coming into town, I probably could have arranged for it." I said I was leaving for San Francisco that evening,—at 10 o'clock I was leaving Portland for San Francisco to attend a meeting at our West Coast conference. I said I could not meet with him then, but I would be glad to meet with him any day. Mr. Powell said, "Well, I will be in San Francisco by Saturday"; he says, "Will you stay over in San Francisco and meet with me?" I said, "Yes, I will stay over." And so the conversation ended there. Powell was to look me up when he got to San Francisco. I told him the hotel where I was stopping at. Well, I was there in San Francisco, and the conference went on. We got a communication,—word came in there from Ted White asking me to stay over until,—it was either Tuesday or Wednesday of the next week. They was having a meeting with Mr. Powell,—Mr. Powell was coming into town,—and the representatives of the Pacific Coast of the Clerks and the Warehousemen's unions was going to [238] meet with Mr. Powell, and for me to stay over after the conference,—which is a matter of record,—asked me to stay over and attend this meeting, which I agree to; and the meeting did not materialize. Tuesday came along and we couldn't find Mr. Powell. So, I had to leave San Francisco, because we had no answer whether Powell would be there then or thirty days from that date. So, I had to get back home; get back home here for Thanksgiving.

(Testimony of Fred Dixon.)

Q. (Mr. Walker continuing) Your telephone conversation was with Mr. Powell on the 12th?

A. The 12th, yes.

Q. You say that you were advised by Mr. White that Mr. Powell would meet with you next Tuesday or Wednesday?

A. He informed the conference,—the Clerks' representative from Portland, the Clerks' representative from Oakland, and the Warehousemen's,—to stay over and attend this meeting, which we agreed to do. Mr. Powell would be there to meet with all the representatives.

Q. Which was the Tuesday or Wednesday following the telephone conversation on the 12th, is that correct?

A. Yes. It was in that neighborhood; because we met that week, and it was the following week.

Mr. Ball: I move to strike out all of this testimony as to what conversation may have taken place between Mr. Dixon and Mr. White, which was not necessarily, or shown to be, known to [239] the respondent. And further, as not bearing upon any of the issues in this case. Incompetent and irrelevant.

Trial Examiner Bokar: I don't think it is particularly material. I am merely letting it stand as the course of conduct of the witness. It shows the witness' course of conduct, over a week or two after speaking to Mr. Powell. It is not necessarily binding upon respondent.

Q. (Mr. Walker continuing) In the month of

(Testimony of Fred Dixon.)

December, 1940, did you have any telephone conversation with Mr. Barth? A. Yes.

Q. Have you any notations of telephone calls in December? Or at any time subsequent to your return to Portland from San Francisco?

A. When I returned from,—

Mr. Ball: (Interrupting) Let the record show the witness has been refreshing his recollection by looking at some memorandum.

Trial Examiner Bokat: Yes.

The Witness: When I returned from San Francisco, why, the only contact that I had was by telephone with Mr. Barth just previous to our strike. I informed Mr. Barth that we were very anxious to try to bring about a settlement; that our people were getting very anxious; that they thought we were stalling for time, or that the company was stalling for time; and that I either had to do something about it, or forget all [240] about it until the following night. Mr. Barth asked me if I felt that there was something he could do. I said, "Yes, you could throw the officials in here to meet with us." I said, "We are willing to withhold any action on the company as long as the company are agreeable to having a meeting.

Trial Examiner Bokat: When was this telephone conversation with Mr. Barth?

The Witness: It was on Monday, the 2nd; December 2nd.

Trial Examiner Bokat: Did you tell Mr. Barth,

(Testimony of Fred Dixon.)

at that time, that your union was going to take some action of some kind?

The Witness: No, I didn't state in so many words. I said no doubt we was calling a meeting; I said no doubt strike action would be taken. He said, "Well, we would like to avoid a strike because of the unpleasantness of a strike and all those things coming about. I said, "Far be it from me to want to call a strike, if there is any possible way our union and the company could get together."

Trial Examiner Bokar: What did Mr. Barth say?

The Witness: Mr. Barth agreed to try to talk to these officials and see if they could get in here and get things going. Evidently Mr. Barth was unable to get the officials to come in here, because no date was set until the time we called the strike.

Q. (Mr. Walker continuing) Did he say who he intended to contact? [241]

A. Mr. Powell.

Q. Was there anything further said in any of these telephone conversations?

A. I had a committee of employees of Montgomery Ward in my office prior to the strike,—three days prior to the strike, in my office,—when I was talking to Mr. Barth at his own home. I talked to him at least half an hour at his own home, telling him about the condition, that it was reaching a point where no doubt there would be a strike on the company,—at that time Oakland had already gone out on strike,—and that there was a possible

(Testimony of Fred Dixon.)

chance that there might be some strike here unless the company was willing to come down and meet with us.

Trial Examiner Bokar: You mean that the Oakland employees of the Montgomery Ward Company had gone out on strike?

The Witness: Yes, they had already gone out on strike at the time I had this telephone conversation.

Trial Examiner Bokar: What did Mr. Barth say?

The Witness: Mr. Barth said he would try to do everything he possibly could to see if he could get somebody in here. I told him that we would withhold action until Friday or Saturday, which we did. We withheld action until it finally got to the point where the committee asked to call a meeting for that Friday night. That Friday night we had this meeting and we explained, from the committee's angle, what meetings we had [242] had,—went right through the whole set-up from the time we started to organize, dealing with the company, what had transpired; and we left it up to the people to decide what they wanted to do; and a vote was taken and there wasn't a vote against,—not going out on strike. They all voted to go out on strike the following morning, which was Saturday, December 7.

Q. Were any reasons advanced for the taking of the strike action?

Mr. Ball: I object to this as not tending to prove or disprove any of the issues in this case. Not the best evidence.

(Testimony of Fred Dixon.)

Trial Examiner Bokat: Overruled. I believe he has gone into it. But if you feel something has been omitted that you want to bring out,—I will let the question stand for that purpose.

A. Well, the employees felt that the company was getting a double payroll up; that there was in every one of their departments,—

Mr. Ball: (Interrupting) Just a minute. What do you mean by “the employees felt”?

The Witness: The employees had a feeling that the company was bringing in people to take their place in case a strike was called.

Q. (Mr. Walker continuing) How do you know the employees felt that way?

A. Because I had at least twenty-five telephone calls in one [243] day from employees from the store.

Trial Examiner Bokat: Now, I am going to sustain an objection of my own motion. That is not responsive. The question, I believe, was directed to the meeting that took place; not the telephone calls that were made during the day.

Q. (Mr. Walker continuing) What reasons, if any, in addition to those you have already mentioned, were advanced at the meeting which brought about the strike action?

A. Refusal of the company to get together with us to negotiate a contract.

Mr. Ball: I object to the question, and I ask my objection go in before the answer, on the ground

(Testimony of Fred Dixon.)

that it calls for the opinion and conclusion of the witness as to the reasons for the action. It is not calling for competent evidence. I move to strike out the answer for the same reason.

Trial Examiner Bokat: I will overrule the objection and deny the motion.

Mr. Ball: May I amplify my motion to strike on the ground that no proper foundation is laid for the form of the answer, the form of the statement of the witness.

Trial Examiner Bokat: May I clarify my ruling, Mr. Ball? I am attempting to ascertain what happened at the meeting,—if a strike vote was taken, and why it was taken. Now, from that, of course, it doesn't mean to follow that because the union's representatives, or bargaining committee, or whatever [244] it was, explained the course of negotiations to the employees present, and that, as a result of that report, they decided to take certain action, that is not proof of the fact, as I see it, that the company refused to bargain collectively. I merely want the record to be clear, that I am admitting that testimony merely to show a course of action, as to what happened. By letting that testimony stand, I am not finding, in effect, that the conclusions reached by the employees present at this meeting, as to whether or not the company refused to bargain collectively, are necessarily binding on the company. That is my position. I am merely letting it stand as a course of conduct; that, in fact, the

(Testimony of Fred Dixon.)

employees voted to go on strike because of certain reasons. Whether the reasons were true or not legally, as far as I am concerned, is something entirely different. With that qualification, I will overrule the objection.

Mr. Ball: I wish to amplify my objection on the ground that the answer, as such, is not competent to prove or disprove any of the issues in this case. Even the facts stated by the Examiner.

Trial Examiner Bokat: Overruled.

Q. (Mr. Walker continuing) Then did you have any meetings with any of the representatives of the company, or other contacts, between the time of the strike and December 13th? A. No, we didn't.

[245]

Q. Now, did you have a form of the agreement, Board's Exhibit 7, before the parties who attended the meeting of December 13?

A. The company had; but at that meeting there, why, there was no contract presented at that time. The meeting was called by the Federal conciliator to try to get the parties together.

Trial Examiner Bokat: May I interrupt for a moment. When did the strike vote meeting take place? The day before the strike?

The Witness: Yes.

Trial Examiner Bokat: December 6th?

The Witness: Yes, December 6th.

Trial Examiner Bokat: All right. Proceed.

(Testimony of Fred Dixon.)

Q. (Mr. Walker continuing) Then at the meeting of December 13th, a form of the agreement was not before the parties at the conference and during the course of the conference?

A. I wouldn't say it wasn't before them. I wouldn't say that it wasn't, because Mr. Huddleston had copies of the agreement. But we didn't present any.

Q. I see. Now, what occurred at the meeting of the 13th?

A. It was a general discussion, trying to find ways and means to get the two parties together and to bring about a settlement of the strike.

Q. Well, how did it open up?

A. Well, the Federal conciliator, he opened up the meeting.

Trial Examiner Bokar: Is this the same Ashe we had before? [246]

Mr. Ball: This is the same meeting of December 13th we had before.

Trial Examiner Bokar: Yes. I wanted to make that clear.

Q. (Mr. Walker continuing) At the meeting of December 13th, was there any discussion concerning the letter of October 2nd, marked Board's Exhibit 6?

A. I don't recall whether there was at that meeting or not, because those meetings were so close together,—three of them so close together,—I don't

(Testimony of Fred Dixon.)

recall whether it was at that first meeting or whether it wasn't.

Q. At either of the three meetings, was the Retail Clerks' representation discussed?

A. It was.

Q. What was said about it?

A. The point was brought out that the reason of our differences and our strike, how it came about—the conciliator asked various questions and the gentlemen present,—I don't recall just who they were,—and they brought out the point if there was any question about whether we represented the majority or not,—

Q. Who brought that out?

A. I believe Mr. Ashe brought out whether there was any question whether we represented the majority or not. Mr. Powell stated,—

Mr. Ball: Just a minute. You mean Mr. Ashe asked Mr. Powell just what you have related? [247]

The Witness: Yes.

Q. (Mr. Walker continuing) All right.

A. And, Mr. Powell stated that they were accepting the Clerks; that they were bargaining with and accepting the Clerks as having the majority; that they had agreed to that.

Q. Now, let's go back to the meeting of the 13th again. Was anything discussed at the meeting in addition to the discussion of the clauses in the Warehousemen's agreement?

(Testimony of Fred Dixon.)

A. If my memory serves me right, why, at that meeting Mr. Ashe wanted the company and the unions to consent to hold negotiations jointly with all the three parties; and that they all get contracts, and set this date,—start out setting a date for going into the contracts.

Trial Examiner Bokat: What three parties are you referring to?

The Witness: Office Workers, Clerks, and Warehousemen.

Trial Examiner Bokat: All right.

Mr. Ball: Will you read that answer to me?

(Whereupon the last answer was read aloud by the reporter as above indicated.)

Q. (Mr. Walker continuing) Did Mr. Powell or Mr. Barth or Mr. Huddleston say anything about that suggestion?

A. I think Mr. Powell agreed to that suggestion.

Q. Do you know a Mr. Glazier?

A. Yes. [248]

Q. How did the meeting of the 13th end?

A. Well, we was just wrangling around on the same basis,—

Q. What had you been wrangling about?

A. Well, the company couldn't agree to this and the company couldn't agree to that,—various sections in there in the contract, they had gone all around about it,—when they come to this meeting,

(Testimony of Fred Dixon.)

why, here they started all over again. What is the use of discussing this? We are still talking in the same place where we started from. We are not getting any place with this thing.

Mr. Ball: I move to strike out the answer of the witness, being entirely the substitution of his opinion and conclusion rather than a statement of fact. It is getting us nowhere listening to this kind of testimony.

Trial Examiner Bokar: The last part of the answer,—as to what Mr. Glazier said,—I am going to let that part remain. The testimony given prior to what Mr. Glazier said will be stricken as being a conclusion of the witness.

Q. (Mr. Walker continuing) What had occurred at the meeting before Mr. Glazier made that statement?

A. I couldn't recall all the details, because—

Q. What had gone on? What had been discussed, if anything?

A. Well, the reason of the strike.

Q. With what organization is Mr. Glazier connected?

A. He represents the Warehousemen in Seattle.
[249]

Q. Was anything concerning the Warehousemen discussed at the meeting of the 13th?

A. Yes, Mr. Glazier brought out how they dealt with Sears Roebuck & Company in Seattle.

Q. How who dealt with Sears Roebuck?

(Testimony of Fred Dixon.)

A. The Warehousemen's Union in Seattle.

Q. Was there anything else concerning the Warehousemen discussed at that meeting by any of the Warehousemen's representatives?

Mr. Ball: I object to the question. I think it is about five times in the course of the last ten minutes that question, almost identically worded, has been asked of this witness. It is getting repetitious.

Trial Examiner Bokar: Read the question, Mr. Reporter.

(Thereupon the last question was read aloud by the reporter as above recorded.)

Mr. Ball: He is attempting to lead the witness into something apparently the witness does not recall.

Trial Examiner Bokar: Overruled. I will let it stand. You can answer the question.

The Witness: Well, so many things, some of them of minor importance,—I don't recall of any major importance.

Trial Examiner Bokar: All right.

Q. (Mr. Walker continuing) Was a form of Board's Exhibit 3 before the parties at that meeting (handing exhibit to witness)? [250]

A. Yes.

Q. Was there anything about it said at that meeting?

A. Yes. Estabrook brought out the point that it had fifteen sections and it had fifteen crosses,—that they had gone into negotiations with the com-

(Testimony of Fred Dixon.)

pany and when they got through they had fifteen crosses or rejections.

Trial Examiner Bokat: You heard him say that?

The Witness: Yes.

Trial Examiner Bokat: Who did he say it to?

The Witness: It was told in the presence of this meeting.

Mr. Ball: I move to strike out the answer of this witness as to what Mr. Estabrook said. The Board has had the opportunity to put in, by Mr. Estabrook himself, testimony as to what he said at this meeting. It is an attempt to expand and enlarge upon that testimony when Mr. Estabrook couldn't remember or recall. It is entirely improper.

Mr. Landye: In this type of a case, where we are going back several months trying to get conversation continuing over several hours,—I am quite sure if we had refreshed Mr. Estabrook's memory on that point we would have been accused by counsel of coaching the witness.

Mr. Ball: I don't see that there is much difference in coaching Estabrook and coaching Dixon on the same matter to fill in what you didn't get.

Mr. Landye: I resent counsel's insinuations,—

[251]

Trial Examiner Bokat: Just a minute, gentlemen, please. I don't want counsel to be addressing each other like this. Address your remarks to me. Let's have no general argument about objections, or the

(Testimony of Fred Dixon.)

merit of the objections. I will give each party their say, and then I will make my ruling.

Objection overruled.

Q. (Mr. Walker continuing) Following the,—

Mr. Ball: (Interrupting) We further move, then, to strike the answer on the ground of hearsay and incompetent; doesn't tend to prove or disprove any of the issues in this case; and furthermore, it is a denial of due process of law to the respondent and in violation of the rules of ordinary procedure.

Trial Examiner Bokar: Motion denied. I am sorry, Mr. Ball, but this witness was present. He testified under oath he was there and heard this statement made in the presence of all these people. I don't want to argue the objection with you. There is some merit to your argument. But we have gone all over this. Perhaps it is somewhat redundant, but I will permit it to stand. Let's proceed, please.

Q. (Mr. Walker continuing) Following that statement of Mr. Estabrook, what next was said or done at the meeting?

A. Well, I don't recall whether there was very much said or done after that meeting. Arrangements was made to have another meeting.

Trial Examiner Bokar: May I interrupt? I would like to ask [252] the witness, in regard to Board's Exhibit 7 for Identification, whether the clauses of that contract were discussed article by article or section by section. Can you answer that question?

(Testimony of Fred Dixon.)

Heretofore you testified that the only section that was ever discussed with the respondent prior to this meeting was Section 1. What I want to know is, did you have a meeting after that in which you discussed more than Section 1?

The Witness: You have referred to before the strike? If there was any section discussed outside of Section 1 before the strike?

Trial Examiner Bokat: Let's say, before the strike, first.

The Witness: No.

Trial Examiner Bokat: After the strike, your next meeting was December 13th. On this particular meeting, were any sections, outside of Section 1, discussed with the company?

The Witness: No, our contract was not discussed on the meeting of the 13th.

Trial Examiner Bokat: It was not?

The Witness: No.

Trial Examiner Bokat: All right.

Q. (Mr. Walker continuing) Was Mr. Landye at the meeting of the 13th? A. Yes.

Q. Did any of the parties at the meeting of the 13th request anything of the company representatives? [253] A. Yes.

Q. What?

A. Mr. Landye requested from the company that they give us a counter proposal.

Mr. Ball: I object to this being not literally a quotation of what was said, and necessarily involving

(Testimony of Fred Dixon.)

the opinion and conclusion of the witness concerning one of the ultimate legal questions.

Trial Examiner Bokat: I will ask the witness if he knows what was said by Mr. Landye, to the best of his recollection.

In effect, I am sustaining your objection and letting the next question stand.

The Witness: Mr. Landye asked Mr. Powell if the company was in a position to give us a counter proposal.

Trial Examiner Bokat: Did he use the words "counter proposal"?

The Witness: Yes.

Trial Examiner Bokat: All right.

Mr. Ball: The same objection, and a motion to strike for the same reason.

Trial Examiner Bokat: Objection overruled and motion denied.

Q. (Mr. Walker continuing) Did Mr. Powell answer?

A. Mr. Powell answered in the same way he had answered previous, that the company wasn't asking anything of the union [254] and he seen no reason why they should give a counter proposal.

Q. Did you attend the meeting of the 14th?

A. Yes.

Q. Was Board's Exhibit 7,—the agreement of the Retail Clerks,—discussed at that meeting?

A. Was there a meeting after that 14th?

Q. No, at the 14th meeting.

(Testimony of Fred Dixon.)

A. What I mean,——

Q. Yes, there was.

Trial Examiner Bokat: It has been agreed there was meetings on the 13th, 14th, and 16th of December. He is now asked about the December 14th meeting.

The Witness: The December 14th meeting. I don't recall very much of the December 14th meeting. I didn't participate very much in it, only as a standby while the rest of them done all the discussion.

Q. Was the proposed agreement of the Retail Clerks discussed at all at that meeting?

A. I don't recall whether it was the 14th or the last one,—I know it was one of those two meetings where the agreement was discussed. I don't recall which it was.

Q. In what manner was the agreement discussed at either the meeting of the 14th or 16th?

A. We gave copies to all the representatives of the company, as well as representatives of the different unions. We all [255] had copies in front of us. And we started out discussing the contract; and we checked off any part of the contract that was agreeable, and checked off the sections of the contract we disagreed upon.

Q. Did you discuss Section 1? A. Yes.

Q. What was said about it?

A. Put a check on it,—rejected.

Q. Now, what had been said about Section 1 before you put the check on it?

(Testimony of Fred Dixon.)

A. Well, the same objection that they had made before.

Q. Well, tell what it was.

A. That it was against the company's policies and principles to compel people to belong to the union, if they seen fit not to belong to the union.

Q. Did somebody say that?

A. Mr. Powell did.

Q. Did the union say anything to that?

A. No; just checked her off as an objection.

Q. And then what did you do?

A. Well, we went on through the contract. I don't recall,—I don't happen to have a copy of the one that had the rejections in it,—but there was a few sections in there of minor importance, that they already had in effect, that they accepted. Well, when we did come to the salaries,— [256]

Mr. Ball: Just a minute. I move to strike that portion of the witness' testimony, that some sections or articles are of minor importance.

Trial Examiner Bokat: Yes, I will have to sustain the motion.

Q. (Mr. Walker continuing) After you had finished with Section 1, what part of the contract did you take up next?

A. We took up Section 2.

Q. Was there any discussion on Section 2?

A. Yes, there was a little discussion.

Q. What was said about Section 2?

(Testimony of Fred Dixon.)

A. Not very much on Section 2.

Q. Well, what?

A. I don't recall exactly what took place.

Trial Examiner Bokat: Did the company agree to accept it as written, or did it not?

The Witness: No, it rejected it, to my knowledge. I haven't——

Mr. Ball: I move to strike out this word "reject." Apparently, from the way this witness is now using the word, it expresses an opinion and a conclusion, and does not describe the facts. I also move to strike out that testimony where this same witness has used that same word as a result of action before, because it now becomes apparent he used it in all occasions expressed an opinion and a conclusion.

[257]

Trial Examiner Bokat: As to the last answer, I am going to allow the motion.

Mr. Ball: Is there a ruling on the motion?

Trial Examiner Bokat: As to the last answer.

Mr. Ball: You will reject it?

Trial Examiner Bokat: I am granting the motion.

Mr. Ball: Thank you.

Q. (Mr. Walker continuing) What did the representatives of the company say about Section 2?

A. That is difficult for me to remember that far back.

Q. Well, read it over.

A. Well, I doubt if there was very much discussion outside of that we just practically went

(Testimony of Fred Dixon.)

right through until we got to the salaries. In fact, we asked the company that if the same procedure was to follow in our sections as in the Warehousemen's, that if there were objections on the part of the company,—the objections to the articles that were in the Warehousemen's agreement, if they would apply as far as the Clerks' agreement, and they said yes. So we skipped them and come to the salaries.

Q. All right. And was that done?

A. Yes.

Trial Examiner Bokat: I will declare a ten minute recess at this time.

(Thereupon a short recess was taken in the hearing, after which the following proceedings were had:) [258]

Trial Commissioner Bokat: You may proceed when you are ready, Mr. Walker.

Q. (Mr. Walker, continuing) You have mentioned a discussion turning largely on wages. Are you referring to Section 31 of the agreement?

A. Yes.

Q. What was said about Section 31?

A. Coming to Section 31, why, they said that the company was not granting any wage increases, and that the company felt that they were the ones to decide whether the employees should have more money.

Mr. Ball: Now, at this time, I would like to

(Testimony of Fred Dixon.)

ask, Is it the meeting of December 14th we are dealing with now?

Trial Examiner Bokat: The witness states either the 14th or the 16th; he cannot recall at which one of those two meetings it happened. Is that correct?

The Witness: That is correct.

Q. (Mr. Walker continuing) What did the union say to that, if anything?

A. We asked them if that was their answer, that there would be no wage increases; they said, Yes. So we just passed on.

Q. Did either Mr. Barth or Mr. Powell say anything further about wages at that time?

A. I don't recall Mr. Barth saying anything on it at all. Mr. Powell stated that there was no wage increases, and that was [259] the end of it. I don't recall Barth saying anything on it.

Q. Did he give any explanation for his statement?

A. He give the explanation that they felt they was paying wages comparable to what was being paid in the city of Portland.

Q. Did he give any reason for his statement, other than that?

A. No; not to my knowledge.

Q. Now, in what manner did the meeting of the 16th end?

A. As I say, those two meetings took place,—they were so close together and I had so many

(Testimony of Fred Dixon.)

things coming up,—I don't recall which one it was, or, rather, what took place at each meeting.

Q. At either of the meetings, did Mr. Ashe take any part? A. Yes.

Q. Can you relate what Mr. Ashe said?

A. Well, I recall in the last meeting, Mr. Ashe asked the company if, at that time, would they grant any wage increase, and they said, No; he said would they enter into any kind of an agreement covering any kind of a union shop clause, and they said, No; he wanted to know if they would enter into anything concerning seniority, and they said, No. I don't recall whether it was right after that or not, but he stated he had reporters that he wanted to make statements to, and he wanted to make a report to Washington, D. C., and he wanted to make a report of the reason of the strike. He wanted to clarify [260] these points,—the advertisements appearing in the newspapers explaining why the strike was called,—he wanted to find out whether there was more to it than just what the advertisements said. I do recall Mr. Ashe,—I think it was the last day, the last meeting that we had, that he was present,—I do recall him picking up his papers and saying, "We aren't getting any place; we might as well call it quits." And he put his stuff in his brief case and we broke up the meeting.

Q. At any of the meetings was there a stenographer present?

(Testimony of Fred Dixon.)

A. No. Mr. Ashe requested,—asked for permission,—I don't recall which meeting it was,—he asked for permission to have a stenographer there, to have a girl to take down the activities; because he accused the company, as well as the union, of being vague in their statements as to dates or times. Mr. Ashe asked for permission to have a stenographer there to take things down in shorthand so they could have some minutes of the meeting.

Q. Who did he ask this permission of?

A. He asked Mr. Powell.

Q. Did Mr. Powell say anything?

A. Mr. Powell said that he would take it under advisement and they would let Mr. Ashe know.

Q. Did he?

A. He told him, No, he could not have a stenographer.

Q. Any reason? [261]

A. No. They felt,—they gave the reason that the discussion would not be flexible enough if they had a stenographer there.

Q. When you say "they" who do you mean? You state "they felt." Who is "they"?

A. The representatives of Montgomery Ward & Company.

Q. During the course of that discussion relative to having stenographic notes taken, did you make any observation about the absence of taking notes?

A. Yes.

Q. What?

(Testimony of Fred Dixon.)

A. I brought it to attention that I seen Mr. Huddleston writing down things on the desk. We felt that we should have a report of this meeting so we would know exactly what took place.

Q. Was anything said to that?

A. Oh, I don't recall; there was something; I don't recall just what exactly was said.

Q. Was there anything said about dictagraphs, or dictaphones?

Mr. Ball: Not only is this getting rather leading, but I can't see it has any bearing at all.

Trial Examiner Bokat: I can't see it has any proper bearing, unless you want to connect it up with someone. As I see it, there is nothing to prevent any representative of the union from making notes. Was there anything to prevent you from making notes if you wanted to, Mr. Dixon?

The Witness: No. [262]

Trial Examiner Bokat: Well, all right.

May I remind counsel for the Board that he has not yet offered Board's Exhibit 7 in evidence.

Mr. Walker: Thank you. It had slipped my mind.

It is hereby stipulated by and between the parties that what has been marked as Board's Exhibit 8 for Identification may be received in the record without further identification.

Mr. Ball: For what it shows on its face.

Mr. Walker: That is all.

(Testimony of Fred Dixon.)

Trial Examiner Bokar: It will be received and marked in evidence as Board's Exhibit 8.

(Thereupon document heretofore marked as Board's Exhibit 8 for Identification was received in evidence.)

BOARD'S EXHIBIT No. 8

All blank spaces on this Application must be filled in completely

Retail Clerks International Protective Association
Affiliated with the American Federation of Labor

APPLICATION FOR MEMBERSHIP OR REINSTATEMENT

Local No. Exact Date of Initiation
.....19.....

City..... State.....

Name of Applicant..... Age.....

Residence Address

Business Address

*Are you actively employed in or by a retail establishment?

Give name of firm.....

State character of work performed.....

How many years have you been so employed?.....

Where.....

How is your general health at the present time?
.....

Have you ever been a member of the International Association before?.....

Where?.....

(Testimony of Fred Dixon.)

When did your affiliation cease and why?.....

Do you agree at all times to abide by the laws of
this Association?

What was the exact date of your birth?.....

I hereby affirm that the above statements made by
me are true and correct, and agree that all moneys
paid by me shall be forfeited to the International
Association, and that my membership shall be de-
clared void if they are not true.

I hereby Designate M.....
as my Beneficiary to receive such Funeral Benefits
as may be payable at my death, according to the
Constitution.

.....
(Signature of Applicant)

.....
(Date of Signing)

We, the Local Executive Board, report.....
on the above application.

(Signed).....
.....
.....

(Extracts from the Constitution)

*Section 7. (a) All persons, over the age of six-
teen years, regardless of sex, employed in stores,
mercantile and mail order establishments, who are
actively engaged in handling or selling merchandise,
and who are under no restrictions specified in these

(Testimony of Fred Dixon.)

laws are eligible to membership, and classified as beneficiary, non-beneficiary, non-active, and general members. Note Sec. 7(d), (e), (f), (g).

Section 32. (a) All applications for membership and reinstatement in this Association shall be made on blanks furnished by the International. Such applications shall be furnished to the Local Unions in duplicate, one copy to be forwarded to the International Secretary-Treasurer for acceptance and one copy to be retained on file by the Local Union.

(c) All applications for membership shall be referred to the local executive board, who shall report their findings to the Local Union, and if adversely, give their reasons therefor if demanded by any member.

The applicant shall name on the application for membership the individual to whom Funeral Benefits shall be paid in case of death.

\$1.00 of the initiation fee or reinstatement fee must be forwarded to the International Association with this application, together with per capita tax for month in which initiation occurred.

[Attached to Application]

Name

Experience.....yrs.mos.

Present Hoursper (day—week)

Present Wages \$.....per (1½ month—week)

(Testimony of Fred Dixon.)

Initiation Fee to be paid as follows:

.....
.....
.....
.....
(Applicant's Signature)

Mr. Walker: I now offer what has been marked as Board's Exhibit 7 for Identification in evidence.

Trial Examiner Bokat: Any objection to 7?

Mr. Ball: None whatever.

Trial Examiner Bokat: Mark it in evidence as Board's Exhibit No. 7.

(Thereupon document heretofore marked as Board's Exhibit 7 for Identification was received in evidence.)

BOARD'S EXHIBIT No. 7

DEPARTMENT STORE

WAGE SCALE AND AGREEMENT

of

RETAIL CLERKS UNION, Local 1257

Retail Clerks International Protective Assn.

Between, of Portland, Oregon and Local No. 1257, Retail Clerks International Protective Association, of Portland, Oregon and affiliated with the American Federation of Labor.

(Testimony of Fred Dixon.)

(Board's Exhibit No. 7 continued)

This Agreement, mutually made and entered into this day of, 1940, by and between of Portland, Oregon, Party of the First Part, and the Retail Clerks International Protective Assn., Local No. 1257, of Portland, Oregon, Party of the Second Part, to-wit:

Section 1. Employers shall be entitled to employ or hire any employees, provided, however, that such employee shall make application within two (2) weeks after being employed to become a member of the Union and if satisfactory to the employer and found worthy by the Union he will be admitted to full membership in the Union.

(a) A temporary working permit good for thirty (30) days only shall be secured by all new or extra salespeople, not members of the Union at the time of employment, provided they are employed more than one (1) day. No working permits shall be issued until all available regular employees of the company are restored to full time service if competent, and available. All new steady employees working half time or in excess, shall be issued a permit for thirty (30) days only, at the expiration of which time they shall affiliate with the Union, provided, they are still employed half time or in excess. Regular extra employees who are employed less than half time shall secure a working permit from the Union the first of every month.

('Testimony of Fred Dixon.)

(Board's Exhibit No. 7 continued)

Section 2. All persons employed by the Party of the First Part who are actively engaged in selling shall be members of the Retail Clerks Union, Local No. 1257, and all other employees as designated by ensuing classifications shall be members of Local 1257. Window trimmers and assistants; mail order department employees; floor cashiers; outside salesmen; marking room employees; bundle wrappers; and all other employees not coming under the jurisdiction of any other Union, except executives. The exception of the executives are to be agreed upon between the Business Representative of the Union and the Representative of the Employer.

Section 3. No male employee shall be discharged and replaced by a female employee unless the female employee shall receive the minimum wage for men as classified. This shall not apply when a male employee leaves the company of his own accord or is dismissed for good and sufficient reason.

Section 4. No regular full time and no regular part time employee shall suffer any reduction of pay or be required to make up any time for holidays, the following holidays to be observed: New Year's Day, Memorial Day, Fourth of July, Armistice Day, Labor Day, Thanksgiving Day, Christmas Day; and all other holidays nationally or locally observed by the stores parties to this agreement. When a holiday falls on Sunday the following Monday shall be observed.

(Testimony of Fred Dixon.)

(Board's Exhibit No. 7 continued)

Section 5. In the laying off of help due to slackness of business and in the consequent re-employment, seniority rights shall be observed.

Section 6. A mutually agreeable system shall be worked out between the employers, parties to this agreement, and the Union to permit the Union activities of receiving complaints and collecting dues during store hours, provided that such activities shall be conducted at reasonable times and so as not to interfere unreasonably with the conduct of the employers' business or to interrupt or interfere with the performance of work.

Section 7. There shall be no discrimination by the Employer against any employee or applicant on account of membership in or on behalf of the Union.

Section 8. Duly authorized representatives of the Union, not on the payroll of the employer, shall be permitted to visit the stores, for the purpose of observing conditions under which members of the Union are working, and to see that the agreement is observed; provided that such visits shall be arranged with the employer. The Employer agrees to cooperate in arranging for such visits at reasonable times and to name two (2) or more persons in each store, each of whom shall have authority to make arrangements for such visits.

Section 9. The Employer shall provide in each store a bulletin board or boards, conveniently

(Testimony of Fred Dixon.)

(Board's Exhibit No. 7 continued)

located, for the posting of notices of official business of the Union. The Union agrees that it will not distribute handbills, posters or other literature within the store. The Employer will provide a receptable or receptacles, at or near such bulletin board in which the Union may place such notices of official business from 2 o'clock on.

Section 10. For the purposes of this agreement, employees are designated as follows: (a) Regular full-time employees; (b) Regular short-hour employees; (c) Extra employees. These are defined as follows:

(a) A regular full-time employee is one who has been employed to work a full number of hours each week. Any employee continuously employed on a full time basis by the Employer for at least six (6) months shall be considered a regular full-time employee.

(b) A regular short-hour employee is one who has been employed regularly less hours per week than a full working week. Any employee who has been continuously employed by the Employer on a short hour basis for at least six (6) months shall be considered a regular short-hour employee.

(c) An extra employee is one employed for temporary work.

(d) A break of service shall not prevent such service from being continuous under subdivisions (a) or (b) of this section, provided that six (6)

(Testimony of Fred Dixon.)

(Board's Exhibit No. 7 continued)

months of actual service shall have been rendered within a total period of two (2) years from commencement of employment.

Experience shall be based on the total experience accumulated in retail stores or departments of the same classifications.

(e) It is understood and agreed that all of those employees who were employed as regular full-time employees, or regular short-time employees, as of _____, and who at the time of signing of this agreement, will not have had six (6) months service shall automatically be rated as regular full-time employees, or regular short-hour employees as the case may be.

(f) The term "regular" used in this section refers to the status of an employee within the particular establishment in which he is working. To attain such regular status employee must have had six (6) months of continuous employment as defined above, with the same employer in Portland.

Section 11. (a) Each employee shall be provided with a card setting forth classification of employment, wage and daily schedule of hours of employment with the starting and finishing time for each day.

(b) Immediately after the signing of this agreement there shall be established a Classification Committee composed of three (3) representatives of the Employer and three (3) representatives of the

(Testimony of Fred Dixon.)

(Board's Exhibit No. 7 continued)

Union. It shall be the duty of this Committee to pass on all matters pertaining to adjustments of the classification of employment.

Section 12. (a) Forty-four hours completed within six days shall constitute a week's work. Employees shall be placed on a straight time schedule of hours, such schedule to be entered on employee's classification cards. Before any change is made in any such schedule one week's notice shall be given to the employees affected, except in cases of emergency or where the change is mutually agreed to by the Employer and the employees affected.

(b) Overtime shall be paid for at the rate of time and one half.

(c) All sales or transactions are to be completed if they are taking place at the normal quitting time of the employee without payment of overtime.

(d) Overtime shall be paid for all work prior to 9:15 A. M. or after 5:45 P. M. as the case may be, and except in the case of those employees whose work must be necessarily be performed in whole or in part before 9 A. M. or after 5:45 P. M. as the case may be.

(1) Mail openers and distributors, sales audit clerks, cash register readers, stock distributors;

(2) Extra wrappers, packers, parcel post and delivery employees who on Saturdays are required to report for duty after 1 P.M.

(Testimony of Fred Dixon.)

(Board's Exhibit No. 7 continued)

- (3) Employees required for inventory work on one night in January and one night in July.

(c) Outside salesmen, collectors, appraisers and adjusters shall be exempt from all limitations of hours except when required to do inside work.

Section 13. No one shall be sent to lunch prior to eleven (11:00) A.M. Every employee shall be sent to lunch at least within five (5) hours of the time of their reporting to work. Any employee who works in excess of five (5) hours without a lunch period shall receive overtime for all such work performed in excess of five (5) hours. All sales or transactions shall be completed if they are taking place at the time the person is to go to lunch without the payment of overtime.

Section 14. When a company doctor pronounces an employee physically unfit to carry on their active duties as an employee, the employee shall have the right to demand an examination by an outside doctor supplied by the Union. If the two doctors are unable to agree on the diagnosis they shall call in a third doctor and the decision handed down by the third doctor shall be binding. The cost shall be borne equally by the employer and the Union.

Section 15. (a) All regular employees who have been in the service of the Employer continuously for one year shall be granted a minimum of

(Testimony of Fred Dixon.)

(Board's Exhibit No. 7 continued)

one week's vacation with pay. All regular employees who have been in the service of the Employer continuously for two years shall be granted a minimum of two week's vacation with pay. In cases where stores have vacation policies which are not in conflict with the foregoing said policies may be retained. Vacations shall be granted between April 1 and October 1 or at other times if mutually agreeable. This provision shall be effective after the current vacation schedule.

(b) In the case of regular short-hour employees pay for the vacation period shall be the average weekly pay received by such employee during the year preceding the vacation.

(c) Leaves of absence or any employee called for government service shall be granted at the discretion of the Employer, and when so granted employee shall be assured of his return to employment without loss of standing.

Section 16. Employers shall have the right to discharge any employee for unbecoming conduct, insubordination, incompetency, neglect of duty, failure to perform work as required not contrary to the terms of this agreement, or to observe safety rules and regulations, or the employers' store rules, which shall be conspicuously posted. If an employee feels he has been unjustly discharged, he shall have the right to appeal to the Adjustment Board.

Section 17. To insure that full and fair consid-

(Testimony of Fred Dixon.)

(Board's Exhibit No. 7 continued)

eration be given all employees in filling vacancies or new positions, in making transfers, promotions, or wage increases, the Employer agrees to review regularly the records of all employees.

Section 18. It is understood and agreed that quota systems shall not be used as the sole basis for discharges.

Section 19. Stock help shall be provided for the Women's Coat Departments, Yardage and blankets.

Section 20. (a) The Employer may require sales employees to do non-selling work providing that such assignments shall not be made during the peak hours and recognizing at all times the common interest of the Employer and of sales employees in the enjoyment by the latter of all reasonable and practicably opportunities of effecting sales. It is further agreed that such assignments shall be equitably distributed between the various members of the department.

(b) The Employer may make temporary assignments of non-selling employees to do selling work during peak hours or seasons only, but keeping in mind also the common interest of the Employer and of the selling employees in the enjoyment by the latter of all reasonable and practicable opportunities of effecting sales.

Section 21. If compulsory sales or educational meetings are held they shall be on the Employer's

(Testimony of Fred Dixon.)

(Board's Exhibit No. 7 continued)

time. Provided, however, that this does not apply to applicants who do not subsequently report for work.

Section 22. All contributions to charity shall be voluntary. It is understood and agreed that no compulsion shall be placed on the employee to force contributions.

Section 23. Not oftener than once a month sales employees, upon individual requests, shall be furnished with records of their sales, provided such sales are individually recorded.

Section 24. Department heads, buyers and assistant buyers, making sales shall enter the same on a department book, such sales to be divided equally among the employees in the department, provided, however, that where department heads, buyers and assistant buyers have their own books this principle shall not apply.

Section 25. An employee whose earning capacity is limited because of physical or mental handicap, or other infirmities, may be employed on suitable work at a wage agreeable to the Employer, the employee and the Union.

Section 26. (a) The Employer agrees to pay all fidelity bond premiums. All cash deposits or cash bonds in lieu of fidelity bonds now in force will be returned to the employees so affected at once. No employee shall be required to pay any premiums on public liability and property damage insurance re-

(Testimony of Fred Dixon.)

(Board's Exhibit No. 7 continued)

quired by the Employer, and covering the operation of an automobile while used in the Employer's business. Charges for physical examinations or sales training when required by the Employer shall be borne by the Employer.

(b) Any employee using his automobile for company service shall be compensated at the rate of five (5) cents per mile for all miles so used required by the Employer.

Section 27. The provisions of this agreement shall apply to all departments leased or subleased to others except where and so long as bona fide agreements or leases between the employers and lessees or sub-lessees in force at the date of this agreement do not permit such application. Subject to the exception stated in the preceding sentence of this paragraph, the provisions of this agreement shall also apply to employees acting as demonstrators or selling jointly for the Employer and others.

Section 28. Where the Employer requires employees to wear identical garb as to style or fashion, when such garb is not suitable for street wear, the Employer shall furnish the same. The Employer shall also provide for the maintenance of such garb.

Section 29. No more than one (1) apprentice shall be employed for each twenty (20) employees. These apprentices shall be reasonably divided among the different departments of the store, both selling and non-selling. It is agreed that an apprentice is

(Testimony of Fred Dixon.)

(Board's Exhibit No. 7 continued)

an employee having less than six (6) months experience in the retail trade, who receives less than the minimum wages specified herein for experienced employees and not less than the minimum scale for apprentices as herein provided for. Time served in one or more stores as an apprentice shall be cumulative.

Section 30. No salary rate herein provided shall be considered other than a minimum wage, and no salary rate above the minimum provided herein shall be reduced.

Before any Employer terminates Group Insurance in effect at the signing of this agreement, he shall give thirty (30) days notice of his intention to terminate to the employees affected.

Section 31. The following are agreed classifications, minimum weekly and monthly rates of pay thereof, and special working conditions as listed under the specified classifications noted:

1. (a) Men's Clothing

\$23.00.....	First year experience
25.00.....	Second year experience
32.00.....	Over three years experience

(b) Men's Furnishings

\$22.50.....	First six months experience
25.00.....	Second six months experience
27.50.....	Thereafter.

(Testimony of Fred Dixon.)

(Board's Exhibit No. 7 continued)

2. Shoe Department

(a) Every regular male employee shall receive a minimum wage of \$27.50 per week, or \$119.50 per month. Extra male help shall receive a minimum wage of \$5.00 per day.

(b) Every part time employee shall receive a minimum wage of seventy-five cents (\$.75) per hour if employee works less than a full day. Any employee shall not work less than four hours in any one day.

(c) Every female employee shall receive a minimum wage of \$22.50 per week or \$97.50 per month.

(d) Every part time female employee shall receive a minimum wage based on the above minimum scale in proportion to the number of hours she works bears to the full day and shall not work less than four hours in any one day.

(e) Every apprentice shall receive a minimum wage as follows:

\$12.50 per week—	\$54.16 per mo.....	First six months
17.50 per week.....	75.83 per mo.....	Second six months
22.50 per week.....	97.50 per mo.....	Third six months
25.00 per week.....	108.33 per mo.....	Fourth six months

(f) All wages, salaries and commissions in force at the time of the making of this contract, greater than the minimum wages guaranteed under this contract, shall be continued in force, and any attempt on the part of the employer to diminish or cut down

(Testimony of Fred Dixon.)

(Board's Exhibit No. 7 continued)

such wages or either or both shall constitute a breach of this contract.

(g) Disregard the monthly pay clause if store is paying by the week.

(h) Any employee reporting for work at opening time shall receive a full day's pay.

3. Women's Ready to Wear and Corsets: Women employed in Ready to wear; suits, coats, silk dresses, corseteers, gloves, piece goods, blankets, draperies and hats shall receive the following scale:

\$16.00.....	First six months experience
18.00.....	Second six months experience
22.50.....	Third six months experience
25.00.....	Thereafter.

4. Miscellaneous Classifications: Service desk, candy, drugs, dry goods, wash dresses, lingerie, ladies underwear, infants wear, bargain room & markers:

\$16.00.....	First six months experience
18.00.....	Second six months experience
22.50.....	Thereafter

5. Hardware: Hardware, sporting goods and paints.

\$20.00.....	First six months experience
25.00.....	Second six months experience
27.50.....	Third six months experience
32.50.....	Thereafter.

(Testimony of Fred Dixon.)

(Board's Exhibit No. 7 continued)

6. Jewelry: \$25.00 per week.

7. Household: Stoves, major appliances, radios, furniture and rugs. There shall be a minimum guarantee of \$35.00 per week for experienced men. The men to work on 10% percentage basis with stipulated guarantee.

8. Stockmen and Farm Basement. \$32.50 per week.

9. City Delivery:

Shipping Clerk\$32.50 per week

Dockmen 27.50 per week

Supervisor..... 35.00 per week

10. Service Station:

Collectors and adjustors.....\$27.50 per week

Service and repairs..... 27.50 per week

11. Window trimmers and display men:

Combination employees, including window trimmers or those working in more than one department shall receive one-half of the difference between the two scales applying over and above the lower scale. This provision does not apply to employees whose work in an additional department is incidental and occasional. \$35.00 per week.

12. Farm equipment and plumbing:

\$25.00 per week.....First six months experience

27.50 per week.....Second six months experience

32.50 per week.....Thereafter.

(Testimony of Fred Dixon.)

(Board's Exhibit No. 7 continued)

13. Catalog Order Desk:

\$16.00 per week.....First six months experience
18.00 per week.....Second six months experience
22.00 per week.....Thereafter

14. Outside Salesmen: The outside salesmen shall be guaranteed a weekly drawing account of not less than \$25.00 and five cents (\$.05) mileage for all miles used for company service. Their hours will not be restricted.

15. Tires, Automobile parts and accessories:

\$25.00 per week.....First six months experience
27.50 per week.....Second six months experience
35.00 per week.....Thereafter.

Purchasing Agent—Any employee designated as a Purchasing Agent actively engaged in the Parts Department handling parts shall be paid not less than One hundred and Seventy-five dollars (\$175.00) per month.

Parts Manager—In charge of the Department and receiving in excess of one hundred and seventy-five dollars (\$175.00) shall not be subject to the terms of this agreement.

All parts departments and Accessories departments will close to the public between the hours of 5:45 PM and 9 AM.

Section 32. General Utility Employees: General Utility Employees shall be those employees not definitely regularly assigned to specific duties in any

(Testimony of Fred Dixon.)

(Board's Exhibit No. 7 continued)

selling or non-selling department. They may be used at the discretion of the employer in any department of the store for any duties, either selling or non-selling, as the occasion arises. Their number shall not exceed six (6) for the first one hundred (100) and five (5) for each one hundred (100) thereafter. The minimum pay for such employees shall be twenty-seven dollars and fifty cents (\$27.50).

Section 33. Extra Employees. All extra employees shall receive a differential of five cents (\$.05) per hour above the scale in the classification in which they work, with a guarantee of four (4) hours pay when ordered to report for work.

Section 34. Regular Short-hour Employees: Regular short-hour employees shall receive the rate of pay provided for the classification in which they are employed.

Section 35. Apprentices: The minimum weekly wage for apprentices shall be not less than Sixteen dollars (\$16.00).

Section 36. Assistant Buyers, Department Heads and Heads of Stock shall receive at least 10% increase in their guaranteed weekly rates above the maximum scale of their departments.

Section 37. All employees working split shifts shall receive one dollar (\$1.00) extra per day.

Section 38. (a) The monthly quota shall be for each month one-twelfth of the total yearly quota of

(Testimony of Fred Dixon.)

(Board's Exhibit No. 7 continued)

the year from, to Such monthly quota shall be maintained at the same figure for each month of the year. Deficiencies shall not be carried forward from one month to another. The present rate of commissions applicable to quotas shall not be reduced, nor shall any present rate of commissions be reduced. Commissions shall be paid monthly.

(b) Those employees below the minimums herein provided shall be increased to such minimums, but in no case shall employees receive less than a 10% increase in their guaranteed weekly salary or weekly drawing account, up to and including employees receiving \$34.99 per week as a weekly minimum guarantee or a weekly drawing account.

Section 39. Immediately upon the signing of this agreement there shall be established an Adjustment Board made up of three (3) representatives of the Employer and three (3) representatives of the Union. The Board shall meet within ten (10) days of the signing of this agreement and select by mutual agreement a panel of five (5) impartial persons, any one of whom may act as arbitrator at such time as the Adjustment Board is unable to agree upon any matter referred to it.

If the parties hereto are unable to agree within twenty (20) days after the signing of this agreement to the panel of five (5) impartial persons who may be requested to act as arbitrators,

(Testimony of Fred Dixon.)

(Board's Exhibit No. 7 continued)

shall each be requested to designate three (3) persons who in their opinion are qualified to act as impartial arbitrators. From the total list so made up each party may strike two (2) names and the remaining names shall constitute the panel from which an arbitrator shall be selected as provided herein.

No arbitrator shall be chosen to serve in two consecutive arbitrations unless by mutual consent of the parties.

The Adjustment Board shall consider all complaints and disputes arising under the terms of this agreement, all questions of interpretation of the agreement and discharge cases. All discharge cases must be appealed to the Board within four (4) days from the date of discharge, otherwise the right to appeal is lost. The Board of Adjustment shall have no authority to negotiate a new agreement.

Any matter referred to the Adjustment Board shall be taken up by the Board within forty-eight (48) hours. If the Board is unable to reach a settlement within five (5) days then the matter shall be submitted for disposition to one of the persons on the panel of impartial arbitrators selected by lot. Any decision made by a majority of the Adjustment Board or as a result of arbitration, shall be accepted as final and binding. Any expenses incurred as the result of arbitration shall be borne one-half by the Union and one-half by the Employer.

(Testimony of Fred Dixon.)

(Board's Exhibit No. 7 continued)

Section 40. In consideration of the Employer signing this agreement and fulfilling the conditions thereof, the Association agrees to notify its membership, the Central Labor Council of Portland, Oregon and the District Council of the State of Oregon that the Employer herein has signed this collective bargaining agreement with the Association. The Association further agrees to loan to the Employer, Union Store Card No. the property of an issued by the Retail Clerks International Protective Assn., affiliated with the American Federation of Labor, for the period this contract shall be full force and effect; provided, however, that the employer agrees to surrender said Union Store Card so loaned to him as aforesaid upon the expiration of this agreement, or upon demand made upon him by the Association, or upon violation of any provision or provisions of this agreement.

Section 41. This agreement shall be in full force and effect to and including the day of, 1940; and shall be renewed for the following year and from year to year thereafter unless either party shall give written notice to the other at least sixty (60) days prior to any..... day of....., during the life of this agreement of a desire to amend this agreement.

If, after giving such notice and prior to the..... day of.....next ensuing, the parties shall fail to agree to such amendments, this agreement

(Testimony of Fred Dixon.)

(Board's Exhibit No. 7 continued)

shall terminate at the expiration date; provided, however, that the parties may, by mutual written agreement, extend the agreement for a specified period beyond such expiration date for the continuance of negotiations; and provided, further, that after either party has given such sixty (60) days written notice of a desire to amend the agreement, either party may, not less than twenty (20) days prior to the expiration date, give to the other party written notice that it desires to terminate the agreement at the expiration date, in which event the agreement shall so terminate at such expiration date.

In Witness Whereof the parties have hereunto set their hands, duplicate, by their respective officers or representatives hereunto duly authorized at the City of Portland, State of Oregon.

For the Employer

For the Union

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Q. (Mr. Walker continuing) Are any departments, or phases of Montgomery Ward's operations in Portland, the employees of [263] which are eli-

(Testimony of Fred Dixon.)

gible for membership in the Retail Clerks, other than those engaged in the retail store?

The Witness: Yes; they have the employees of the catalogue order.

Q. (Mr. Walker continuing) Are there any employees in the general office department who are eligible for membership in the retail clerks? [264]

A. You mean according to the payroll, that are working in the payroll?

Q. No. According to the manner in which the employees are carried on the payroll.

A. Yes. On the payroll is the floor cashiers.

Q. Now, what are the duties of the floor cashiers?

A. The duties of the floor cashiers is to accept change and does the wrapping. There is a different practice in every store. In some stores,—

Q. What is the practice in Montgomery Ward's retail store?

A. Well, it is on the general run, making change and taking care of the store customers and delivering the final package.

Q. And where do their duties require them to be? Where do they do this work? [265]

A. They work right on all the floors where they are engaged in selling.

Trial Examiner Bokar: May I interject at this point? I may be running ahead of your planned questions, but the complaint alleges here that all the retail clerks of the respondent employed in its

(Testimony of Fred Dixon.)

Portland, Oregon plant, who are engaged in selling in the retail store, constitute a unit appropriate for the purposes of collective bargaining.

Trial Examiner Bokar: I want to find out whether the expression "retail clerks" includes people such as floor cashiers, package wrappers, window trimmers, and what have you.

Mr. Walker: That is correct. [266]

Q. Are there any other categories of workers who are eligible for membership in the Retail Clerks?

A. Yes. There is window trimmers helpers, and messengers.

Q. What do the window trimmers helpers do?

[267]

A. They help trim windows.

Q. How do they do that?

A. I don't intend to be a master of it. I merely state, as far as I know, as to what their duties are. To decorate windows; put merchandise in the windows for display purposes.

Trial Examiner Bokar: Are you referring now to window trimmers or to window trimmers assistants?

The Witness: Window trimmers assistants.

Trial Examiner Bokar: Any reference to window trimmers themselves?

The Witness: No.

Trial Examiner Bokar: Are window trimmers themselves eligible for membership?

(Testimony of Fred Dixon.)

The Witness: If they haven't got the right to hire and fire the employee working under them.

[268]

Trial Examiner Bokar: Before you make your objection, let me ask this question, and you can object to this question, too.

Coming to Montgomery Ward in particular, would you say that the window trimmer in that store was a man in a supervisory position and therefore you would only take in the assistants?

The Witness: The window trimmer, yes. A store of its size has more display than some of these smaller stores would have. Naturally he is exempt because he is supervising people.

Trial Examiner Bokar: You merely contend, then, for the window trimmers assistants, as far as Montgomery Ward & Company is concerned. Is that correct?

The Witness: Yes. [269]

Q. (Mr. Walker continuing) Now what do the messengers do?

The Witness: My interpretation is, a messenger is more or less of an errand boy.

Q. (Mr. Walker continuing) What do they do at Montgomery Ward?

A. They do just that thing.

Q. Where do they do their work?

A. In the retail store.

Q. Does their work bring them in contact with merchandise? A. Yes.

(Testimony of Fred Dixon.)

Trial Examiner Bokat: What classes of employees has this witness already covered,—window trimmers assistants, messen- [270] gers, floor cashiers?

Mr. Walker: That is correct. [271]

Q. (Mr. Walker continuing) Do you know whether or not Montgomery Ward, at their retail store, employed individuals described as tire mounters? A. Yes.

Q. Are such eligible for membership in the Retail Clerks? A. Yes.

Q. (Mr. Walker continuing) What kind of work do the tire mounters do?

A. Well, the customer makes a purchase in the store, and they take the tires out to the station out there and mount the tires on the customer's car.

Q. And do they do any work in addition to that? Where do they do this work?

A. Do it alongside the retail store there.

Q. Do you know whether or not Montgomery Ward, at its retail store, employs a type of individual described as a service man?

A. Yes.

Q. Are such eligible for membership in the Retail Clerks? A. No. [272]

Q. Are employees who are described as tailor or tailors eligible for membership in the retail clerks?

A. No.

Q. With respect to the service man and the tailor, does the Retail Clerks claim that those per-

(Testimony of Fred Dixon.)

sons are part of the appropriate bargain unit or that they are not? A. They are not.

Q. How about the watch repairer, or jeweler?

A. They are not eligible.

Q. And are or are not part of the appropriate bargaining unit? A. They are not.

Q. What about the linoleum layer?

A. No, we don't claim linoleum layers.

Q. As eligible for membership?

A. They are not eligible for membership.

Q. Are they or are they not a part of the appropriate bargaining unit? A. They are not.

[273]

Q. (Mr. Walker continuing) Do you know whether or not Montgomery Ward, at its retail store, employs an employee known as a service record clerk? A. Yes.

Q. Is such type of individual eligible for membership in the Retail Clerks? A. No. [274]

Mr. Ball: It is stipulated that the employees described by the following descriptions are actually employees of Montgomery Ward & Company, and that these types of employees are types which the witness Dixon would claim were not eligible to membership in the Retail Clerks' Union, and should not be included in the appropriate unit.

Trail Examiner Bokar: Is that satisfactory?

Mr. Walker: Yes.

Trial Examiner Bokar: All right. Will you set forth the particular classifications under the stipulation?

(Testimony of Fred Dixon.)

Mr. Walker: Cashier other than floor cashier; display manager; adjuster, typist, assistant cashier, abstract clerk, calculator operator, sign writer, timekeeper, purchase control, secretary, advertising manager, window trimmer, copywriter, invoicer, credit clerk, bookkeeper, assistant credit manager, collector, service supervisor; service man, tailor, watch repair; linoleum layer; service record clerk, stockroom supervisor, receiving clerk, delivery supervisor, elevator operator, porter, doorman, traffic, matron, building service, detective; also, all department heads. All such persons, in addition, designated as "Saturday extras".

Mr. Ball: It is further understood that the following classes of employees are also employed by Montgomery Ward & Company at their Portland retail store, and that they are the [277] employees which the witness Dixon says are eligible for membership in the Retail Clerks' Union, and are within the group which the witness contends should be treated as an appropriate unit for bargaining purposes.

Trial Examiner Bokat: Is that agreeable?

Mr. Walker: Yes.

Trial Examiner Bokat: All right, will you set forth the particular classifications under that stipulation?

Mr. Walker: Floor cashiers, display helper, tire mounter, stockman, order filler, marker, messenger, sales person, outside salesman.

Q. (Mr. Walker, continuing) I call your atten-

(Testimony of Fred Dixon.)

tion to paragraph 7 of the complaint describing the appropriate bargaining unit consisting of retail clerks employed in the Respondent's Portland store engaged in selling there. [278]

Q. The complaint in this case says that the appropriate unit shall consist of Retail Clerks engaged in selling in the retail store, and you contend that the unit is more inclusive than the one set forth in the complaint; do you?

A. Yes, they have other people that automatically do not come under any other International Union, and we have to take those people in our organization.

Q. And those classes you have already set forth in the stipulation? A. Yes.

Q. And those are to be included in the unit?

A. Yes.

Q. Is that the unit that you claim to have been bargaining for when you met with the respondent? [280]

A. I definitely explained our position when we attempted to negotiate.

When and where, and with whom did you discuss the different classes of employees that your union claims to represent?

The Witness: At our first meeting in September with Mr. Powell, Mr. Barth and Mr Barr.

Trial Examiner Bokar: What did you say with regard to the classification of employees that your union represented?

The Witness: They asked our union what type

(Testimony of Fred Dixon.)

of people we were representing, and I explained what type, all verbally, you understand.

Trial Examiner Bokat: I understand. [281]

Trial Examiner Bokat: Is that what you told them, that you represented those classes of employees set forth in Section 2 of the contract? Did you state that you claimed to represent those types of employees?

The Witness: I would like to have a copy to look at.

Trial Examiner Bokat: All right, look at this (handing copy to the witness.)

The Witness: Yes.

Trial Examiner Bokat: You specifically mentioned window trimmers and assistants; mail order department employees; floor cashiers; outside salesmen; marking room employees; bundle wrappers; and all other employees not coming under the jurisdiction of any other union excepting executives?

The Witness: Yes.

Trial Examiner Bokat: Is that what you told them?

The Witness: Yes.

Trial Examiner Bokat: Specifically?

The Witness: With the exception of, like a window trimmer,—for instance, they have different definitions in different stores. They have a description, and they have a certain work to do, and the division of work of even a window trimmer in any two stores is not the same. No employers in the

(Testimony of Fred Dixon.)

United States would use the same term, or have exactly the same kind of work for any classification. That is, they would [282] have generally the same type of work, but they may classify them different because of other additional duties that they may have.

Trial Examiner Bokat: You have already gone into that. What was the reply of the representative of the company? You stated that at that time the company said something about the office workers coming in.

The Witness: They wanted us to include the office staff in the bargaining unit.

Trial Examiner Bokat: What was your reply to that?

The Witness: I stated to the Company that they had a direct charter under the American Federation of Labor, and that there was an Office Workers' organization here, and we had no right to bargain for any other International Union but our own, but that we could bargain for our own union and no other international union.

I stated that is what we should do.

Trial Examiner Bokat: You did, subsequently, however, send a letter to the company in which you made some reference to bargaining jointly, or both unions bargaining jointly?

The Witness: Yes. The Company contended that we should, and, in fairness to the company we agreed that we would attempt to do that, or that we would

(Testimony of Fred Dixon.)

ask the Office Workers to bargain jointly with us on the contract, so as to speed up the negotiations.

[283]

Trial Examiner Bokat: All right. Was there a separate contract submitted on behalf of the office employees, or was Board's Exhibit 7 considered to be a contract that would include the officeworkers?

The Witness: After the letter was sent, the employees,—office employees were present when we presented our contract, and they were there to present theirs.

Trial Examiner Bokat: And they presented theirs?

The Witness: No, they did not, but they were there.

Trial Examiner Bokat: But they never did present it?

The Witness: No, because it was not taken up; however, they were there to present their contract.

Mr. Ball: Of course, I call the Examiner's attention to the fact that there are a good many opinions and conclusions in these answers.

Trial Examiner Bokat: I understand that. But what I am trying to find out is whether or not these Office people and Retail Clerks were attempting to negotiate one contract, or whether they were attempting to negotiate two separate contracts, meeting jointly; and that is what I am attempting to find out.

The Witness: It states at the bottom of our letter:

(Testimony of Fred Dixon.)

“This is to notify you that we are willing to negotiate a contract for the entire retail store. We are agreeable that the negotiations cover the office workers as well as the Retail [284] Clerks, that one contract be signed covering the entire retail store, and that such contract will be negotiated by both unions involved at one time, and if an agreement can be reached, it will be signed by both unions involved.”

Trial Examiner Bokar: That is the point that I am trying to get at. There is in evidence a proposed contract which claims to cover the Retail Clerks' Union?

The Witness: Yes.

Trial Examiner Bokar: In other words, you did not submit one contract which did cover both the Retail Clerks and the Office Workers Union?

The Witness: I think that the Examiner fails to realize that we had a meeting with the company before, and we had submitted a contract to the company before that.

Trial Examiner Bokar: I understand.

The Witness: But they brought in the Office Workers, and it was in fairness to the company that we agreed to bring the Office Workers into those negotiations,—not to bring the Office Workers into our Union, because we wouldn't have any right to take the Office Workers.

Trial Examiner Bokar: I am not trying to infer that you were attempting to take the Office Workers into your Union. I was merely attempting

(Testimony of Fred Dixon.)

to understand whether you were trying to negotiate one contract for both unions, because the letter seems to infer that one contract would be signed covering both [285] unions.

The Witness: Yes, we do that with other firms, but we would include their conditions in our contract. That is, we would put the two contracts together. While both of them would be negotiated separately and finally agreed upon, neither one would be signed until both were agreed upon, covering the conditions for both types of work.

Trial Examiner Bokat: I think that is sufficient.

Q. (Mr. Walker, continuing) When was Board's Exhibit No. 7 first drawn?

A. Oh, I would say that it was in July or August; I don't recall the exact date.

(Thereupon a document was marked as Board's Exhibit 9 for identification.)

Mr. Walker: It is hereby stipulated and agreed that what has been marked as Board's Exhibit 9 for identification may be received without further identification.

Trial Examiner Bokat: Is it so stipulated?

Mr. Ball: It is so stipulated. I object, however, to the receipt of this exhibit on the ground that it is immaterial to any issues in this case, and incompetent to prove any issues in this case.

Trial Examiner Bokat: Are you offering the constitution and by-laws of the Retail Clerks' Union?

(Testimony of Fred Dixon.)

Mr. Walker: Yes. [286]

Trial Examiner Bokat: I will receive it in evidence, and it may be marked in evidence as Board's Exhibit No. 9.

(Whereupon, the document heretofore marked as Board's Exhibit No. 9 for identification was received in evidence.)

Mr. Walker: I have no further questions of the witness.

Mr. Landye: No questions.

Cross Examination

Q. (Mr. Ball) Do you recall that on August 30, you and Mr. Langford called on Mr. Barth?

A. Yes.

Q. Do you recall that Mr. Barth said at that time that the matter which you wanted to present had to be referred to the company's labor relations representative at Oakland? A. Yes.

Q. You recall that while you left a proposed contract, nothing was discussed at that time except the matter of referring it to the labor representative, and having the labor representative present at the meeting when it was discussed? A. Yes.

(Whereupon a document was marked as Respondent's Exhibit 6 for identification.)

Q. (Mr. Ball, continuing) I hand you what the reporter has marked as Respondent's Exhibit No. 6, and I ask you if you have seen that before? [287]

(Testimony of Fred Dixon.)

A. No, I have not. That is the first time that I have seen it.

Q. You do know, however, that the Office Employees' Union had distributed bulletins to the employees of Montgomery Ward claiming that the Warehousemen and Retail Clerks were awaiting negotiations until the Office Employees could join with them?

A. Yes, we heard of that.

Mr. Ball: Is there any dispute that this was distributed?

Mr. Walker: No.

Mr. Ball: I would like to offer it in evidence.

Trial Examiner Bokat: Is there any objection to the respondent's offer of exhibit 6?

Mr. Walker: No.

Trial Examiner Bokat: There being no objection, it will be received and marked in evidence as Respondent's Exhibit 6.

(Whereupon the document heretofore marked as Respondent's Exhibit 6 for identification was received in evidence.)

RESPONDENT'S EXHIBIT No. 6

September 9, 1940

Office Workers

Montgomery Ward and Co.

Portland, Oregon.

Contrary to reports being circulated we are continuing to hold organizational meetings for the

(Testimony of Fred Dixon.)

office workers of your company. Meetings are held every Tuesday evening in the Masonic Temple, 1119 S. W. Park Ave. at 8 P. M. Directions to meeting place are plainly posted in lobby.

The Warehousemen's and Retail Clerks unions are not as yet proceeding with negotiations for their people with your employer because they are desirous of giving you office workers all the opportunity possible to join your union so that all three unions may negotiate at once; the advantage of such a plan is obvious. However, it is becoming more and more apparent that these two unions cannot delay any longer because of the demand for action from their people in your plant; consequently, we are forced to take this opportunity to tell you that any further delay on the part of those of you in the office will be very much to your disadvantage. We urge you to act immediately for the betterment of your personal wages, hours and working conditions.

Very truly yours,

OFFICE EMPLOYES UNION No. 16821

J. HOWARD HICKS,

Secretary.

OEU:16821

AFL:127

Q. (Mr. Ball) Your Union had occasion to distribute quite a bit of literature to Ward employees from, say, September 1st on?

(Testimony of Fred Dixon.)

Mr. Walker: I will object to that as incompetent, irrelevant and immaterial.

Trial Examiner Bokat: Overruled at this time.

[288]

A. That my union had been distributing literature after September 1st?

Q. (Mr. Ball, continuing) You did distribute papers to Montgomery Ward employees after September 1st?

A. No, not to my knowledge.

Q. You never did distribute any literature to Ward employees after September 1st?

A. Not to my knowledge.

Trial Examiner Bokat: Did the Union distribute any circulars?

The Witness: No. If they did, they worked on their own and not on the instruction of the union.

Trial Examiner Bokat: All right.

Q. (Mr. Ball, continuing) On September 9, you phoned Mr. E. L. Barth, did you not?

A. I would say, probably, yes. I would not recall the date exactly.

Q. And you asked him at that time whether you could not have a meeting on September 18 with Mr. Powell? A. Yes.

Q. And Mr. Barth promised to write Mr. Powell by air mail to find out if that date was agreeable?

A. Yes.

Q. And all that was discussed in that phone call was whether Mr. Powell could come?

(Testimony of Fred Dixon.)

A. That is right. [289]

Q. And up to that time, there had been no further discussion concerning anything else?

A. No.

Q. On September 18, Mr. Barth phoned you that September 19 would be more satisfactory to Mr. Powell? A. Yes.

Q. And September 19 was satisfactory to you?

A. Yes.

Q. That was the extent of that particular phone call? A. Yes.

Q. You recall that at the meeting on September 19, at the old Heathman Hotel, Mr. Powell stated that the company was ready to discuss the proposals, but not to be understood as recognizing any particular unit set forth in the contract, or the units set forth in the contract as the proper unit for their employees? A. Yes.

Q. And Mr. Landye said that there could be no discussion without that recognition? A. Yes.

Q. And you made the statement that the appropriate units were those engaged in retail selling?

A. No, I didn't make that statement.

Q. And Mr. Powell stated to you that in view of the company, the entire store was an appropriate unit? [290]

A. Yes.

Q. And Mr. Landye said that your union would still be able to bargain for the entire store, because it had a majority of the entire store?

(Testimony of Fred Dixon.)

A. I would state that we could not, if we wanted to, because there were other Internationals involved.

Q. But he did make the statement, did he not, that the union had the majority of the employees in the store?

A. Coming under the Retail Clerks' unit?

Q. He said that, irrespective of the unit, you had the majority of the employees in the entire retail store? A. I don't recall that.

Trial Examiner Bokat: You mean his union, or all the A F of L Unions combined?

Mr. Ball: That *is* union had enough signed up to constitute a majority of all the employees.

Trial Examiner Bokat: Did he say that?

The Witness: I don't recall that, no.

Q. (Mr. Ball, continuing) And then Mr. Landye outlined the three alternative methods of finding out how many employees had selected your union as representative? A. Yes.

Q. And Mr. Powell said that he had no authority to accept these alternatives, but would advise the Union after he had considered the matter? [291]

A. Yes.

Q. And that, was all the discussion that took place at that meeting, was it not?

A. Well, it took a couple of hours, and we set a date when the deadline was that they would reply, and that was set as Monday, the 23rd, and he said that they would have an answer by that time.

(Testimony of Fred Dixon.)

Q. And on September 20, Mr. Barth called you and told you that the company at that time had rejected the alternatives until after the problem of an appropriate unit could be determined?

A. No, I don't recall any call like that.

Q. You say now under oath that no such call was made to you on September 20?

A. I say that I don't recall.

Q. You are not denying that the call was made?

Mr. Walker: Just a minute. He said that he had no recollection. He can't possibly be called upon to answer a question like that.

Trial Examiner Bokar: I think that the answer is quite definite.

Q. (Mr. Ball, continuing) Now, on the morning of September 25, you called Mr. Barth, did you not? A. September 25?

Q. Yes. A. I might have, yes. [292]

I don't recall these dates, because I haven't anything in my book as to when I called Mr. Barth.

Q. You have no memoranda which indicates when the calls took place?

A. I have memoranda of meeting calls, but not just a phone call.

Q. Do you recall that when you called Mr. Barth, on or about September 25, that Mr. Barth repeated to you again the fact that they could not accept the three proposals while the appropriate unit had not been agreed upon?

(Testimony of Fred Dixon.)

you and the company, other than the ones that you have covered here on cross examination?

A. Not to my knowledge.

Q. On September 30, Mr. Barth notified you that we would accept a letter if you stated what percentage of the employees in the retail store your unions had?

A. I don't recall him saying that we had to have that in the letter. I read the letter to him over the phone. I recall that, I believe. If I recall it correctly, he wanted to know,—just a minute. I read it to him, and then wanted to know if it was satisfactory, and if it was satisfactory, I would mail that letter to him. And, if I recall, it was satisfactory to him, and I mailed it to him. It was signed by Mr. Hicks and myself.

Q. You testified that nothing was said in the letter about inserting in the letter the number of employees that you claimed to represent? [295]

A. We discussed it, but I don't recall that they asked us to put that in the letter.

Q. But they may have, so far as your present recollection is concerned?

A. They may have, but I don't recall.

Q. Then you recall that Mr. Barth arranged for a meeting to be held with you October 22?

A. Yes.

Q. Now, at the meeting of October 22, which was held at the Heathman Hotel, Mr. Hicks, Mr.

(Testimony of Fred Dixon.)

Langford and yourself were present, and Mr. Powell started the meeting by asking if you could give him the exact number and percentage of employees which were represented? A. I believe so.

Q. And you stated that you represented 175 employees, which you said was 95 per cent of those eligible for membership in your union?

A. I don't recall giving him any figures. I recall saying that we represented between 85 and 90 per cent.

Q. You deny that you gave any figures?

A. I don't recall giving any figures. I used the term of percentage. I don't know why I would have used figures in that instance.

Q. You recall Mr. Hicks stating that he represented 25 employees in the retail store, which was, he thought, 70 per cent. of the [296] remainder?

A. I recall him saying that he represented 75 per cent. I don't recall him saying how many. He said "75 per cent." because I inquired how many he had, and that is the answer that was given.

Q. And then you pointed out that between the two of you, you represented the majority of the entire number of employees of the retail store?

A. Covering our jurisdiction.

Q. You also testified that you represented a majority of all the employees in the retail store?

A. No.

Q. You swear under oath that you did not make that statement?

(Testimony of Fred Dixon.)

Mr. Walker: Counsel has been doing that time and time again, and it is perfectly obvious what the purpose is in phrasing a question like that.

Trial Examiner Bokat: Sustained as to the form of the question. I believe the witness realizes that he is under oath, and has been duly sworn. Just re-frame your question.

Q. (Mr. Ball, continuing) Do you now state positively that you did not make any claim to represent a majority of the employees in the entire retail store?

A. No, because, how could I? I have not the jurisdictional right under the American Federation of Labor law.

Mr. Ball: I move to strike the answer as argumentative. [297]

Mr. Walker: Just a minute. I submit, that counsel asked for it, and that is what he got.

Trial Examiner Bokat: I will let it stand for what it is worth. The expression of the witness "How could I?" is somewhat argumentative, but I will let it stand for the purpose of saving time only.

Q. (Mr. Ball, continuing) You definitely state that you did not at any time during the meeting make the statement that you represented a majority of all the employees?

Mr. Landye: That has already been asked and answered. He has been arguing with the witness for the last five minutes.

(Testimony of Fred Dixon.)

Trial Examiner Bokat: Sustained as to the objection. I don't agree that he has been arguing with him for five minutes.

Q. (Mr. Ball, continuing) You then suggested that the proposed agreement be discussed, section by section? A. Yes.

Q. Did Mr. Powell agree? A. Yes.

Q. And then you asked for Section 1 of the agreement to be discussed, and you asked if that agreement was acceptable? A. Yes.

Q. And Mr. Powell then stated that he could not agree, and stated his reasons why he could not agree to that clause? A. Yes.

Q. And then you stated that you were surprised that this question [298] was raised, did you not?

A. Yes, I believe that I did.

Q. And then you stated that unless the company would agree to Section 1 as written, there was no reason for further discussion?

A. No. I stated this: that all other contracts with our International Union, those contracts must provide some kind of union shop clause, and I said that our International Union has to accept all these contracts after they are negotiated, and we are continuously warned by our International Union not to enter into any agreement unless it provides for a union shop clause for representation, and I said that I was not at liberty to accept a union shop clause unless it provided some protection for our International Union.

(Testimony of Fred Dixon.)

Q. And then you mentioned the fact that you had an A F of L conference in Cleveland last summer, where certain rules were laid down for you?

A. Yes, but it was not a constitutional amendment. It was a general discussion as to what representatives should look out for.

Q. And then Mr. Powell said that he could not agree to that particular clause in the contract?

A. Yes, and I asked him for a substitute.

Q. You asked him for a substitute or a counter-clause?

A. Yes, on that clause, and on the contract.

[299]

Q. You asked for a substitute for that clause?

A. Yes, certainly. It is a part of the contract.

Q. And you said that you would have to return to the employees if you didn't have that clause?

A. I said that I would have to return back to the employees with their proposal.

Q. That is, a counter proposal on that clause?

A. Not only that clause.

Q. Now, you did not at any time in that session ask for any general counter proposals to any contract which you had not discussed in detail?

A. When?

Q. At this meeting of October 22?

A. Asked for a counter proposal?

Q. Yes. A. Yes.

Q. For more than just this section ?

A. I asked for the entire contract counter proposal; a counter proposal on the entire contract.

(Testimony of Fred Dixon.)

Q. Then, why didn't you discuss the entire contract with the representatives of the company?

A. For the simple reason that the main part of our discussion was a dispute as to the first section.

Q. And you stated that that dispute had to be settled before any other discussion was worth anything [300]

A. No.

Q. What did you say?

A. I stated that, before we could make any modifications on the rest of the contract, we would have to have some form on the first part of the contract,—some offer on the first part of the contract, in some form.

Q. You did say, Mr. Dixon, that this was the main part of your contract, this Section 1, didn't you?

The Witness: May I have that question again?

Trial Examiner Bokat: Will you read the question?

(Thereupon the pending question was read aloud by the reporter as above recorded.)

A. I argued for that section of the contract, yes.

Q. (Mr. Ball, continuing) You did say that it was the main section of the contract, didn't you?

A. I said all our contracts with our employers, if we relinquished that part of the contract, we must cancel that particular clause with other employers.

Q. You used the term, that it was the main part of the contract, didn't you?

A. No.

Q. You used the term a minute ago,—

(Testimony of Fred Dixon.)

A. I analyzed,—

Mr. Walker: Let the record speak for itself on that.

Q. (Mr. Ball, continuing) You recall that you said something about the employees at Montgomery Ward having some grievance, as [301] the meeting broke up that day?

A. They had some grievances?

Q. You used the word "grievances" didn't you?

A. I don't recall.

Q. You don't recall any such conversation?

A. No.

Mr. Walker: That is repetitions.

A. (Witness continuing) I imagine that I did say "grievances", otherwise they would not affiliate with the union, probably.

Q. (Mr. Ball, continuing) Mr. Barth asked you if there were any complaints that existed about wages and hours, and you said there was none, didn't you?

Mr. Walker: Just a minute. I will object to that as a compound question.

Trial Examiner Bokar: Let me hear the question again.

(Thereupon the pending question was read aloud by the reporter as above recorded.)

Trial Examiner Bokar: Overruled.

Mr. Walker: Unless the witness can adequately answer the question as it stands, I think that it should be broken up into two parts.

(Testimony of Fred Dixon.)

Trial Examiner Bokat: If he can answer it as it stands, let him do so; otherwise, he may indicate that he cannot.

A. I never answered the question that there was no dispute over hours. [302]

Q. (Mr. Ball continuing) You say definitely that you made no such statement?

A. Yes.

Q. And that statement is just as true as the rest of your testimony?

Mr. Walker: I will object to that.

Trial Examiner Bokat: Sustained. Do you want to state something?

The Witness: I want to state this, that I made a statement to Mr. Barth that various employers have thought because their employees wanted to join the union that they are dissatisfied with the company; that is not so. People do not join a union because they are dissatisfied with the employer in every sense, but they do want uniform conditions?

Q. (Mr. Ball, continuing) You did mention that you didn't know of any dispute about wages and hours?

A. I said grievances against Mr. Barth,—that the employees didn't have any grievances against Mr. Barth.

Q. You recall that you called Mr. Powell the following day, October 23?

A. That I called Mr. Powell?

Q. Yes. A. At the Heathman Hotel?

(Testimony of Fred Dixon.)

Q. Yes. A. Yes. [303]

Q. You said that because the company could not agree to Section 1, you thought that the company should make a counter proposal?

A. I had taken that up at the previous meeting,—counter proposal?

Q. You didn't make that statement on October 23?

A. Yes, I made the statement that they should make a counter proposal.

Q. On Section 1?

A. Not as to Section 1 but as to the entire contract. I said that we would take the counter proposal from the company to the employees, to see what they wanted to do about it.

Q. Now, Mr. Dixon, did you or did you not say, in exactly these words, "Since the company could not agree to Section 1, the Company should make a counter proposal"?

A. I recall the counter proposal, but I didn't say as to Section 1.

Q. Do you deny that you said it that way?

Mr. Walker: I will object to that.

Trial Examiner Bokst: I will let it stand. Will you read the question back, Mr. Reporter?

(Thereupon the question referred to was read as follows:

"Now, Mr. Dixon, did you or *did not* say, in exactly these words, 'Since the company could

(Testimony of Fred Dixon.)

not agree to Section 1, the Company should make a counter proposal' ") [304]

Q. (Mr. Ball, continuing) Did you or did you not say it that way?

A. I will put it this way: I said that if they couldn't agree to the contract, they should give us a counter proposal.

Mr. Ball: May I have an answer to the question?

Q. (Mr. Ball, continuing) Did you or did you not say that, "Since the Company could not agree to Section 1, they should make a counter proposal"?

A. No.

Q. You did not say that they should make a counter proposal to Section 1? A. No.

Q. Do you deny that you said it?

A. Yes.

Q. And didn't Mr. Powell state to you that the work of organizing the employees should be left up to the employees and not to the company?

A. No.

Q. Do you say that he did not say that?

A. I say that I don't recall him saying that. I don't know whether he did or not.

I don't recall him making that statement.

Q. You do recall that he said that, since the union only discussed one section, no counter proposal for the entire contract was called for? [305]

A. No, I don't recall him saying anything like that.

(Testimony of Fred Dixon.)

Q. Do you deny that he said it?

A. Yes, I will deny that he said it.

Q. You now under oath state that Mr. Powell did not make that statement to you? A. Yes.

Q. You deny it? A. Yes.

Mr. Walker: I will object to that. That is repetitious and improper in form.

Trial Examiner Bokat: Yes, but it has been answered. Let us proceed.

Q. (Mr. Ball, continuing) Now, do you recall that you then asked Mr. Powell when the remaining provisions of the proposed contract made by you could be discussed? Do you recall that?

A. No. I still stand on my last answer, that I didn't ask for any counter proposal on Section 1. I did not ask for any discussion on the balance,—

Q. Do you now deny—

Mr. Walker: Just a minute. Let him finish his answer.

Trial Examiner Bokat: Yes.

The Witness: I deny that at any time I asked for a discussion on the balance of the contract. I stuck on them giving us a counter proposal.

Q. (Mr. Ball, continuing) And you never asked for a discussion [306] on the remainder of the contract?

A. You are speaking of this meeting here, and I am answering you for this meeting. If you want to go further, that is a different story. At this meeting, when Mr. Powell was in town, he left with the

(Testimony of Fred Dixon.)

instructions that they was going to think it over on the matter of the counter proposal. My answer to Mr. Powell was for him to give us a counter proposal, and he left with the thought in mind that he would contact, maybe it was you,—I don't know who he was to contact,——

Mr. Ball: I move to strike that statement that Mr. Powell left town with the thought that he would do so and so.

Mr. Walker: You have been digging into the witness, digging and digging at him, and you asked for the very answer that you got. I don't think that there is anything that should be stricken.

Trial Examiner Bokat: I will strike it out, what Mr. Powell thought. As to the rest of the answer, I will let it stand.

Q. (Mr. Ball, continuing) Up to that time, you had not discussed with him the remaining provisions of your contract, other than Section 1?

Mr. Walker: I will object to that as having been asked and answered.

Trial Examiner Bokat: Sustained.

Q. (Mr. Ball, continuing) Either on October 23, or before, had you asked for any discussion of the remaining provisions of that [307] contract?

Mr. Walker: Same objection.

Trial Examiner Bokat: I will let it stand.

A. Yes, tentatively he agreed with me to give the counter proposal some thought. He said that he would take it under advisement. So we didn't go

(Testimony of Fred Dixon.)

into the contract and just discussed generalities, about conditions in general, and so on.

Q. (Mr. Ball, continuing) You say that Mr. Powell agrees with you to give you a counter proposal in the form of a different contract?

A. I have answered that question.

Q. Answer that question "yes" or "no".

Trial Examiner Bokart: Just a moment. I don't think that he can answer that "yes" or "no". In a sense it is repetitious; the witness has already testified as to that twice, that Mr. Powell was going to determine or consider whether they were going to make any counter proposal to the contract, or to contact Chicago. I don't know that he used those exact words, but that is the impression that I got from the testimony. Let's see if I can get it clear. Will you read the last question, Mr. Reporter?

(Thereupon the question referred to was read aloud by the reporter as follows:

"You say that Mr. Powell agreed with you to give you a counter proposal in the form of a different contract?")

Trial Examiner Bokart: You may answer that "yes" or "no". [308]

A. He did not agree. I will have to state the history. He would not agree to anything, to be truthful about it.

Mr. Ball: I move to strike that as an opinion and conclusion of the witness, that he would not agree to anything.

(Testimony of Fred Dixon.)

Mr. Landye: Mr. Examiner, on these questions, the way they are being asked, in an argumentative form, I will object. And I will object particularly to this question as having already been asked and answered three or four times.

Mr. Ball: May I state for the record that I am dealing with a very evasive witness, and constantly interrupted by objections of counsel, which permits the witness to understand what counsel want him to be on guard against, and I must have some latitude,——

Mr. Walker: That shows that counsel is just the kind of an attorney that I thought counsel was. The witness has been answering the questions directly, and whenever the witness stated that he didn't recollect, counsel has prodded him with some very improper questions, in an attempt to mislead the witness by the sort of questions he has asked the witness.

Trial Examiner Bokar: I think that we have had enough of this petty bickering. We have gotten along very fine up to this time, and I don't see why we should not continue in the same spirit. I know it is getting towards the end of the day and everybody is tired, but let us relax. Let us have the question. I don't want all the objections, but let me hear the question. [309]

(Thereupon the question referred to was again read aloud by the reporter as follows:

(Testimony of Fred Dixon.)

“Q. You say that Mr. Powell agreed with you to give you a counter proposal in the form of a different contract?”)

Trial Examiner Bokart: Try to answer that. We will strike out the previous answer, and start over again.

A. I did not state that he agreed. We tried to persuade him to agree on giving us a counter proposal. I myself stated there at this meeting, that I desired a counter proposal. Later on, I stayed at the meeting for about two hours after the rest of them left, and it got to more or less *or* a friendly discussion,—not an argument,—as to what our future relationships with Montgomery Ward would be, and I was convinced that Montgomery Ward would negotiate with us at that time, and I wanted them to submit a counter proposal. Mr. Powell said that he was not at liberty to submit a counter proposal, but said that he would consider the thing,—not that he agreed, but that he would consider it. And those are the facts.

Q. (Mr. Ball, continuing) Now, didn't you ask him at that time when he would next be in Portland for a discussion?

A. Yes, and he said that he was not quite sure. He said in about two weeks.

Q. And he mentioned the fact that he intended to be in Portland when Mr. Estabrook asked for a meeting?

(Testimony of Fred Dixon.)

A. I don't recall that. I don't recall him saying that. [310]

Q. And you said to him, did you not, that you would keep in touch with Mr. Estabrook to find out when he would be in Portland?

A. I did what?

Q. Did you or did you not say that you would keep in touch with Mr. Estabrook and find out when Mr. Powell would be in Portland?

Mr. Walker: Same objection.

Trial Examiner Bokat: Overruled.

A. I don't recall saying that I would keep in touch with Mr. Estabrook.

Q. (Mr. Ball, continuing) Now, you recall on November 12 Mr. Powell telephoning you?

A. Yes.

Q. And he told you at that time that he was in for this meeting with Mr. Estabrook?

A. No. Mr. Powell called me up about five o'clock, at the time I was about ready to leave the office. He said that he had had a meeting all day, or a part of the day, with Mr. Estabrook, and that he was through with Mr. Estabrook, and wanted to know if I could meet with him the next day. I told him I was sorry that I could not, because I was leaving for San Francisco to attend a conference there which had been set for about six months previous.

Q. Mr. Powell stated to you that the thing to

(Testimony of Fred Dixon.)

do was to sit down and discuss the remaining provisions of the contract, didn't [311] he?

A. No, the discussion was very brief. He said, "You are leaving for San Francisco. Can you let me know where you are staying in San Francisco?"

And I said, "Yes, I can. I will be stopping at the Empire Hotel in San Francisco," and he told me that he would be there around Saturday himself.

Q. And didn't he suggest to you that the purpose of the next meeting with you would be to discuss the remaining provisions of your proposed contract?

A. No, he didn't say the remaining provisions.

Q. Other than Section 1?

A. He said that he wanted to meet with me. I don't recall him saying what he wanted to discuss.

Q. Have you any memorandum of your various discussions, to refresh your recollection?

A. I have in my head.

Q. You are speaking entirely without any memorandum of what was said in the meetings?

A. No, we don't take down minutes of meetings and discussions, no.

Q. Isn't it a fact that when Mr. Powell suggested the meeting, you stated that you would be glad to have a meeting with him when you got back to Portland, and you asked him if he could meet you the first of the following week, and he mentioned that [312] he would not be back from Oakland until the first of the following week?

(Testimony of Fred Dixon.)

A. I said that I would be in Oakland by Saturday.

Q. But not before Saturday?

A. That if he would contact me, if I would stay over and get over to Oakland by Saturday.

Q. Didn't you say that you had to come back to Portland?

A. No; I said the conference ended on Saturday. He asked me specifically if I would be willing to go over to Oakland and see him.

Q. How did that come about?

A. Well, he asked me if I would lay over in Oakland.

Q. Until the first of the following week?

A. Yes.

Q. Didn't you suggest that he come to Portland the week of November 25?

A. Not to my knowledge; I don't recollect.

Q. In the course of this telephone conversation, didn't you suggest to Mr. Powell that he come to Portland the week of November 25?

A. I don't recall the dates there, but I asked him to set the date.

Q. And Mr. Powell replied that he could not be sure to be,—he could not be sure at present whether he could get back that week? [313]

A. Yes.

Q. And you said that you would not be down in San Francisco or Oakland again until the latter part of December, after this trip?

(Testimony of Fred Dixon.)

A. That I would not be back in Oakland until December?

Q. That you would not be making a second trip to Oakland until the latter part of December.

A. No, I couldn't have said that, because I have made only one trip to San Francisco. There would be no reason for me going to San Francisco; I would have no business there.

Q. Mr. Powell stated that he would call you the next time he was in Portland, didn't he?

A. No. He agreed to contact me in San Francisco.

Q. And you stated at that time that you had not kept in touch with Mr. Estabrook, and had forgotten to do so?

A. No, sir.

Q. You deny that?

A. Yes.

Q. Are you acquainted with Thomas White?

A. I have met him in San Francisco.

Q. Do you know about the formation of this committee to speak for the A F of L against Montgomery Ward in the eleven Western States?

A. The formation of a committee to speak against Montgomery Ward? [314]

Q. To deal with Montgomery Ward in the eleven Western States?

A. Using the term "to speak against Montgomery Ward", I don't know of any committee like that.

Q. To negotiate with Montgomery Ward and to

(Testimony of Fred Dixon.)

deal with Montgomery Ward in the eleven western states?

You know of such a committee?

A. Yes. I was tentatively on one of the committees.

Q. You knew that Mr. White was the spokesman for that committee, did you not?

A. Yes.

Q. And that committee was to speak for both the warehousemen and the retail clerks?

A. Well, they represented the general organizations that were to start negotiations, with the understanding that the Local Unions would ratify or accept anything, or reject it.

Q. But they had that authority, to start negotiations, in the beginning? A. Yes.

Q. On November 25, you called Mr. Barth and asked to have an appointment, stating that you wanted to meet with company representatives on December 9 and 10?

A. I asked the Company to meet with us?

There was so many calls during that week, I couldn't recall.

Q. And during the course of that call, you stated that you thought the company was stalling in order to get through the [315] Christmas season, didn't you? Didn't you bring up the Christmas season?

A. You mean did I make the statement to Mr. Barth?

Q. Yes, you made that statement to Mr. Barth?

(Testimony of Fred Dixon.)

A. I made the statement to Mr. Barth that I thought the company was giving us the runaround in refusing to meet with us.

Q. Did you not make a statement that had particular reference to the Christmas season, that you thought Montgomery Ward was attempting to postpone negotiations until after the Christmas season?

A. I don't recall making that statement.

Q. Well, do you deny that you made it?

Mr. Walker: I will object to that.

Trial Examiner Bokat: Yes.

Mr. Ball: Mr. Examiner, there is a difference between having the witness say that he doesn't recall or that he did not make the statement.

Trial Examiner Bokat: I understand that. I will reinstate the last question. Read it, Mr. Nelson.

(Thereupon the last question was read aloud by the reporter as above recorded.)

A. Yes.

Q. (Mr. Ball, continuing) Mr. Barth said to you, did he not, that he thought that when the representatives of the company and you got together, that they could agree on many sections of the [316] contract?

A. Mr. Barth said this,—I don't know whether I should say it,—that he felt that our Local Union and Mr. Barth himself could get together on the terms of this contract, but it was entirely out of his hands, and it was up to the company to negotiate the contract.

(Testimony of Fred Dixon.)

Q. Didn't he state that between you and him and Mr. Powell, an agreement could be reached on the provisions of the contract, he thought?

A. He said that we were not so far apart, so far as he was concerned, on the agreement, and that if the Local Union and he,—that the Local Union and he could get together on the terms of the contract, and I was confident of that myself.

Q. That was on December 5?

A. I think so.

Q. Now, on the same day, Mr. Barth called you back, stating that he had talked with Mr. Powell on the telephone? A. I believe he did.

Q. And Mr. Powell,—and Mr. Barth said he had understood from Mr. Powell that a negotiator was appointed to represent the Retail Clerks and the Warehousemen in the eleven western states, and he mentioned that in the telephone call?

A. He stated that he felt that they were negotiating in Oakland.

Q. Yes. [317]

A. And I said that they were negotiating in Oakland for Oakland, while we were negotiating here for ourselves. And then I stated that, if, as I stated, we couldn't get together, and if it was too far for the company to be running between Portland and Oakland, that we authorized them to start dealings for us over there.

Q. That Mr. White had been authorized to represent you?

(Testimony of Fred Dixon.)

A. That he was to represent the Warehousemen's Council.

Q. And to speak for your union as well?

A. No. We had the Retail Clerks' representatives to speak for the International.

Q. But the committee, of which Mr. White was a spokesman, was to represent the Retail Clerks and the Warehousemen?

A. The committee, yes. In a general way.

Mr. Ball: I am through with this witness.

Trial Examiner Bokat: Any redirect?

Redirect Examination

Q. (Mr. Walker) I call attention to your testimony on cross examination to the effect that, in a telephone conversation with Mr. Barth, you stated that if the dealings were between the Local and himself, he felt that progress could be made, or words to that effect? A. Yes.

Q. Now, did Mr. Barth explain to you what position he held in the matter? [318]

A. Yes, he explained that he was the local manager, and on that type of matters, they were taken up higher, to men like Mr. Powell or representatives of that sort, and were not taken up with the local managers, and that the company had these men to deal on this type of matters.

Mr. Walker: That is all.

Trial Examiner Bokat: Mr. Dixon, it has been stipulated that a number of employees who have

(Testimony of Fred Dixon.)

been classified should be excluded or may be excluded as not being eligible for membership to your union. Can you state the reasons for their ineligibility?

The Witness: Well, the sign painters, take them as an example: they belong to the Sign Painters International Union. Also, take the watch repairmen, they belong to the Watch Makers. As the Company knows, their union of watchmakers, their employees, members of the Watch Makers' Union have been working for Ward's for years. Then there are the linoleum layers, and Mr. Barth knows that we have sat down in conference with those men in negotiating contracts. Then there are the Tailors, who have worked under a union set-up. As I understand it, from the Tailor's Union, Montgomery Ward is a party to the set-up of employers where the employers have agreed upon a wage stipulation. There are a number of organizations that work under that contract. I understand that Montgomery Ward is a member of the Association where these people are signed [319] up under a contract, and these Tailors have been working there under that set-up.

All these different set-ups, are set-ups that deal with different occupations, and under the jurisdiction of different International Unions. As to dealing with Montgomery Ward for various members of these different International Unions, which are affiliated with the A F of L, we have absolutely no

(Testimony of Fred Dixon.)

right to do so. They have a right to deal for themselves. If we wanted to deal for them, under the A F of L, we would get into a jurisdictional squabble. We couldn't stay in the A F of L and do that.

Trial Examiner Bokar: Do you know whether or not the Company has bargained with any other classifications of employees which you have just mentioned, such as the sign painters, the linoleum layers, tailors, and so on?

The Witness: I mentioned the tailors.

Trial Examiner Bokar: Excluding the tailors.

The Witness: I am speaking of one that I happened to be present at when a tentative settlement was made. That was with reference to the Linoleum Layers. They had a non-union linoleum layer that.——

Trial Examiner Bokar: I don't care about the details.

Mr. Ball: I think that the details are important, because it was not a collective bargaining session.

Mr. Walker: That is agreeable with me, that they have not [320] dealt collectively with the Linoleum Layers.

Trial Examiner Bokar: What I want to find out is why the Union excludes such classifications of employees from the appropriate unit.

The Witness: Because it is a craft organization.

Recross Examination

Q. (Mr. Ball, continuing) Of course, you are not attempting to tell us that you have repeated

(Testimony of Fred Dixon.)

everything, or exactly the words that Mr. Powell stated in the meetings that you had with him, but you are giving your recollection of the sense of his answers? A. Yes.

Q. You recall that at the first meeting, you asked whether the company would sign a contract?

A. That I asked whether the Company would sign a contract?

Q. Yes.

A. That is what we were negotiating for.

Q. Do you recall that Mr. Powell said that he did not know of any contracts that the Company had signed up to that date?

A. He stated that the company does not sign a contract. He said that they could agree to an agreement, but they did not sign a contract. I told him that I thought they did, and I thought that the company did have an agreement,——

Q. Did he say that they didn't sign, or hadn't signed? A. He said that they didn't sign.

Q. Are you sure that the word was not "hadn't" instead of [321] "didn't"?

Mr. Walker: Well, I will object to that.

Trial Examiner Bokar: Suppose that you reframe your question, Mr. Ball.

Q. (Mr. Ball, continuing) But he might have said that the company had not, and you misunderstood him and thought that he said that the company did not?

A. He made the statement that they did not sign

(Testimony of Fred Dixon.)

contracts. He didn't say they would not, but he stated that they did not.

Q. And he did add that they didn't know of any that they had signed?

A. I contended that they had, and I said,——

Q. (Interposing) You contended that they had?

A. I contended that they had, and he said there was no signed contract, to his knowledge.

Trial Examiner Bokst: Up to that particular time?

The Witness: That is right. Up to that particular time.

Trial Examiner Bokst: All right. Are there any further questions of this witness? The witness is excused.

(Witness excused)

Mr. Walker: Mr. Allen. I might state that Mr. Allen is a short witness.

S. EUGENE ALLEN

called as a witness by and on behalf of the Board, was examined after being duly sworn, and testified as follows: [322]

Trial Examiner Bokst: Give us your full name and address.

The Witness: S. Eugene Allen. I live at 1536 N. E. 58th Avenue.

Trial Examiner Bokst: What is your last name?

The Witness: Allen. (spelling)

(Testimony of S. Eugene Allen.)

Direct Examination

Q. (Mr. Walker) What is your occupation?

A. President of the Office Employees' Union.

Mr. Ball: I would appreciate it if you would speak up a little louder, Mr. Allen.

The Witness: Yes, I will. I am president of the Office Employees' Union.

Q. (Mr. Walker, continuing) How long have you held that position?

A. Oh, for about five,—four years, I guess.

Q. In your capacity as President of that organization, have you had occasion to meet with any of the representatives of Montgomery Ward & Company?

A. Yes, I did on three occasions.

Q. Were those the three meetings in December?

A. That is right.

Q. In any of those meetings, did you take part?

A. Do you mean, did I enter into the discussions?

Q. Yes. A. Yes, I did. [323]

Q. Can you fix which meeting it was?

A. I think in all three meetings, probably, but I recall particularly the things that were said by myself in the second and third of those meetings.

Trial Examiner Bokar: That would be on the 14th and 16th of December?

The Witness: That is correct.

Q. (Mr. Walker, continuing) Was a form of contract similar to Board's Exhibit 7 before the parties at each or both of those meetings?

(Testimony of S. Eugene Allen.)

A. Yes, I think there was at both of the meetings.

Q. What was said by you at the meeting of the 14th, or 16th?

A. I recall, of course, entering into discussions at times, now and then, a little bit, but principally, the thing that I recall was asking the company officials who were present,—I think it was on the 14th,—if they would sign an agreement with the unions which provided for the same hours, wages and working conditions as prevailed at the plant before the strike was called.

Q. Was there an answer to that question?

A. Yes.

Q. What was the reply?

A. Mr. Powell answered "no", and then Federal Conciliator Ashe asked some questions,—he asked the same question again, [324] perhaps rephrasing it, but essentially the same, and Mr. Powell replied to that, that he would have to consider the matter.

Q. What had occurred immediately prior to this time which prompted your question?

A. My asking,—are you asking why I asked the question?

Q. Yes.

A. Really, the reason I asked the question was because we were apparently making no progress, and I had doubts in my mind as to whether we could get a signed agreement. I doubted whether the company would sign any agreement.

(Testimony of S. Eugene Allen.)

Mr. Ball: I move to strike that as an opinion and conclusion of the witness, the doubts that the witness had in his mind.

Trial Examiner Bokat: Yes.

Q. (Mr. Walker, continuing) What had gone on previously?

A. The discussion centered, of course, around the agreement that had been proposed by the Union to the company.

Q. By the Office Workers?

A. Well, all three were being discussed jointly, and I think probably the Office Workers' Agreement had not been particularly mentioned up to this point.

Trial Examiner Bokat: Had one been submitted, a separate contract?

The Witness: Yes, one was submitted at this meeting of the 14th. [325]

Trial Examiner Bokat: You say that a contract was submitted on behalf of the Office Workers?

The Witness: Yes, on the second meeting. I am sure it was on the second meeting; that would be the 14th.

Trial Examiner Bokat: Do you have a copy of it?

The Witness: I don't have it myself.

Mr. Walker: I have a copy.

The Witness: I haven't one myself.

Trial Examiner Bokat: All right. I don't want to be premature.

(Testimony of S. Eugene Allen.)

Q. (Mr. Walker, continuing) What agreements were discussed up to that point?

A. The Warehousemen's agreement, particularly, with some reference to the Clerks. You understand that the agreements were largely identical in many parts, and while we discussed those particular parts, we were not specifically mentioning the Warehousemen, the Office Employees or Retail Clerks, because of their almost identical proposals.

Q. (Mr. Walker, continuing) Now, was there any discussion with any of the representatives of the company concerning that particular matter?

A. I don't know which matter you have reference to.

Q. Was Mr. Langford at that meeting?

A. Yes.

Q. At the meeting, which contract was discussed first, if you [326] recall, the Warehousemen or the Retail Clerks'?

A. That is right; the Warehousemen's.

Q. Was there any discussion about the manner in which the Retail Clerks' agreement would be discussed or gone over in relation to the Warehousemen's agreement?

A. Well, my recollection is that the discussion revolved largely around certain provisions that were common to all agreements, and it was assumed by all parties present that we would get down to the particular differentials in wage scales later on.

(Testimony of S. Eugene Allen.)

Q. Was anything said about the relationship of the Retail Clerks' Agreement to the Warehousemen's agreement?

A. I don't recall any particular discussion on that point.

Q. Now, do you recall anything further said by yourself at either of these meetings, the 14th or the 16th?

A. Yes.

Q. What was it?

A. I remember discussing some of the provisions of the agreements that were before us. On the meeting of the 16th, which would have been the last meeting, I recall that we went over the agreements of all three of the unions, section by section, in an effort to find something that we could agree upon there.

Mr. Ball: I move to strike "in an effort to", and what follows. [327]

Trial Examiner Bokar: That may be stricken.

Mr. Walker: That is all.

Trial Examiner Bokar: You may cross examine.

Cross Examination

Q. (Mr. Ball) You have something to do with the Oregon Labor Press, in addition to your position?

A. Yes.

Q. What is your position there?

A. I am the editor.

Q. I assume, in that connection, you keep in touch with most labor matters in Portland?

(Testimony of S. Eugene Allen.)

A. I assume I do, although some of my readers assume that I don't.

Q. Well, as a matter of fact, before you went into this meeting of December 13, you had discussed and knew that Mr. Landye was preparing charges against Montgomery Ward for failure to bargain collectively with the Warehousemen?

A. No, I did not.

Q. That is one bit of news that had escaped you before you went into the meeting?

A. Yes, I am afraid that was a scoop that I missed.

Q. Now, at the time of the discussions about the written contract, you recall Mr. Powell's first reply to your question, to the effect that your question was premature? Do you remember that he used the word "premature"? [328]

A. I don't recall that he did.

Q. Don't you recall,—

A. (Witness interposing) I am not denying it; I am saying that I don't recall it.

Q. Don't you recall that he suggested that the question of the form of agreement should be postponed until after the contents of the agreement had been decided upon or settled?

A. Well, there, again, it is possible that he did, but I don't recall it.

Q. Do you remember Mr. Denecke asking you then,—you know who Mr. Denecke is?

(Testimony of S. Eugene Allen.)

A. Yes.

Q. Whether or not your union would sign any contract that would just embody the present practices of the company in the matter of hours, wages and the like?

A. I don't recall whether it was Denecke. As a matter of fact, I have a recollection that Mr. Powell inquired if we were submitting that as a proposal.

Q. And you said no, that you were not? Whoever asked you the question?

A. I don't recall that I answered it, but I very probably would have answered it that way, if I did.

Q. Did Mr. Powell state that it was a hypothetical question? You remember he used the phrase "hypothetical question"?

A. I don't remember that.

Q. You are not denying it? [329]

A. Well, there was lots of discussion and talk. He may have used a word, and I would not recall it.

Q. Now, you will recall that there was considerable discussion in detail about a number of sections in the contract that could be agreed upon, and that discussion did take place?

A. I am sorry. Will you read that again?

Trial Examiner Bokat: Yes, will you read the question back to the witness, Mr. Nelson?

(Thereupon the last question was read by the reporter as above recorded.)

A. I don't recall any sections were agreed upon.

(Testimony of S. Eugene Allen.)

Q. (Mr. Ball) Do you recall a discussion of Section 4, for example, in the Retail Clerks' Union contract? On holidays?

A. I remember some discussion about the holidays. I remember that it was discussed.

Q. And you remember that was agreed upon, don't you?

A. As I recall it, the company asked if we would be willing to change one holiday. I believe it was Washington's Birthday.

Q. With that exception, it was agreed upon?

A. And they asked the Union, and the Union agreed to that.

Q. It was agreed to?

A. I don't know whether Mr. Powell agreed to it, by that language.

Q. At least, there was no further objection raised by the company to that section? [330]

A. I don't recall that there was.

Q. There were a number of other sections of the contract under the same category, similarly treated?

A. What do you mean by "similarly treated"?

Q. Where there was a minor change in the form of agreement, or in which there was no change?

A. There were some sections where it was apparent that we were not very far apart.

Mr. Ball: That is all.

Trial Examiner Bokart: Any redirect?

Mr. Walker: No.

(Testimony of S. Eugene Allen.)

Mr. Ball: Just a minute. May I ask another question?

Trial Examiner Bokat: Go ahead.

Q. (Mr. Ball, continuing) Mr. Allen, upon this matter of signing the contract, you will recall that Montgomery Ward caused an advertisement to be printed in the press that they would sign a contract and reduce it to writing if an agreement could be reached?

Mr. Landye: Anything that Montgomery Ward would cause to be printed, would be self-serving, and binding upon them, and not upon us.

Trial Examiner Bokat: That is correct. But he may answer the question.

The Witness: Now, what was the question?

Trial Examiner Bokat: Will you read the question, Mr. [331] Reporter?

(Thereupon the pending question was read aloud by the reporter as above recorded.)

Mr. Walker: I object to that on the ground that the instrument speaks for itself, In answer to that, the document is the best evidence.

Trial Examiner Bokat: The objection is well founded, but I will permit it, to save time.

A. I don't recall every ad. I do recall them running some ads in the papers.

Q. (Mr. Ball, continuing) You do recall what they said?

A. Well, in a general way, yes, I do. Do you want me to tell what I recall they said?

(Testimony of S. Eugene Allen.)

Q. Yes, that would be a good way to test your recollection.

A. Yes, I think so; in fact, I am sure. They said that no dispute existed as to wages, hours and conditions in the plant, that the dispute was over a closed shop. Of course, they ran a number of days. I can't recall every one.

Q. How many?

A. I think they ran ads in both the Portland dailies for a couple of times, perhaps, during the earlier days of the strike. I think that they had two ads in each Portland daily, and then about two weeks ago, similarly.

Trial Examiner Bokar: Mr. Ball, are you going to try the case on what was said in the newspapers, or what took place in [332] the conferences?

Mr. Ball: I think it is obvious what the purpose is.

Trial Examiner Bokar: I assume you are offering it to show the good faith of the company. I am merely trying to find out.

Mr. Ball: It seems to me that the purpose of any published statement on the part of this respondent is certainly significant on the question of good faith.

Trial Examiner Bokar: If that is your position, all right. Do you have anything further?

Mr. Ball: I think not.

(Testimony of S. Eugene Allen.)

Redirect Examination

Q. (Mr. Walker) Were any ads run in the Oregon Labor Press?

A. I don't recall Montgomery Ward offering to buy any space.

Mr. Walker: That is all.

Trial Examiner Bokat: You are excused.

(Witness excused)

Trial Examiner Bokat: At this time, I will adjourn the hearing until 9:30 tomorrow morning. We are recessed until then.

(At 5:07 p.m. April 15, 1941, the hearing was adjourned to 9:30 a.m. April 16, 1941, same place.)

[333]

Proceedings

Trial Examiner Bokat: The hearing is now in session.

Mr. Walker: Mr. Langford, will you please take the stand?

MAXEY M. LANGFORD

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Bokat: Give us your full name.

(Testimony of Maxey M. Langford.)

The Witness: Maxey M. Langford, 404 Labor Temple.

Direct Examination

Q. (Mr. Walker) Portland, Oregon?

A. Portland, Oregon.

Q. Mr. Langford, are you connected with any labor organization? A. Yes.

Q. What organization?

A. The Retail Clerks' Union.

Q. In what capacity?

A. I am the International Representative.

Q. Were you such in October, November and December, 1940? A. I was.

Q. In such capacity, have you met with any representatives of the respondent here?

A. I have.

Q. When did you first meet with the respondent?

A. I can't give you the exact date on that; I believe it was during the month of August. [338]

Mr. Ball: Will it be agreed that it was August 30?

Mr. Walker: All right.

Q. (Mr. Walker, continuing) Whom did you meet with at that time? A. Mr. Barth.

Q. Anybody else?

A. I believe Mr. Denecke came into the office just before the meeting began, or during the meeting.

Q. And who was there representing the Union?

A. Mr. Dixon and myself.

(Testimony of Maxey M. Langford.)

Q. Where was that meeting held?

A. In Mr. Barth's office.

Q. What occurred?

A. Briefly, it was for the purpose of deciding who we were to meet with, and when we were to meet with them in order to negotiate a contract for the Retail Clerks people of Montgomery Ward.

Mr. Ball: I move to strike the answer of the witness relating to the purpose of the meeting as a conclusion of the witness.

Trial Examiner Bokar: Is there any dispute about it?

Mr. Ball: That might have been their purpose, but, as a matter of fact, the subjects discussed were not that.

Trial Examiner Bokar: All right, let him say what was said.

Q. (Mr. Walker, continuing) . What was said?
[339]

A. At that time, we went into Mr. Barth's office, and Mr. Dixon said that he was desirous of negotiating a contract covering the sales people of the Portland plant of Montgomery Ward, and asked for information as to who would have the power to negotiate that contract and when we could meet with them.

Q. Were the questions answered?

A. They were.

Q. Who answered them? A. Mr. Barth.

Q. What did he say?

(Testimony of Maxey M. Langford.)

A. He said that he didn't have the power to negotiate such a contract, that that would be left up to Mr. Heidinger, who was at that time in the East.

Q. Were there any arrangements made concerning the time when the meetings could be held?

A. No.

Q. Did anything else take place there?

A. No.

Q. Did you meet again? A. Yes.

Q. When next? A. October 22.

Q. At the Heathman Hotel?

A. That is right.

Q. When you and Mr. Dixon and Mr. Hicks were present? [340] A. Yes.

Q. Who was present there for the company?

A. Mr. Barth and Mr. Powell.

Q. Will you relate what was said at that meeting?

A. There were so many things said, but it revolved mainly around the negotiating of a contract for the sales people, and the majority of the discussion took place there regarding the Union Shop clause.

Q. Did you say anything? A. Yes.

Q. What did you say at that time, if anything?

A. At that time, when the first clause had been read by Mr. Powell,—

Trial Examiner Bokar: You mean the proposed contract?

(Testimony of Maxey M. Langford.)

The Witness: The proposed contract, yes.

Trial Examiner Bokat: Board's Exhibit 7, I believe, Section 1. Is that the section referred to? Will you look at that exhibit?

The Witness: That is the one; Section 1.

Trial Examiner Bokat: All right.

Q. (Mr. Walker, continuing) Go ahead and state what you said at that time.

A. Mr. Powell stated that it would be impossible for the company to agree to that particular clause because it was contrary to the company policy. I then suggested that we might be [341] able to get together on a substitute clause to the effect that any of the people working in the plant at that time coming under the jurisdiction of the Retail Clerks' Union and who had filed applications for membership, were to remain members of the Union, and any new members coming into the plant would affiliate with the Union within 30 days; however, any people coming under the jurisdiction of the Retail Clerks who had not as yet filed application would not necessarily have to join the Union.

Trial Examiner Bokat: Did you have any discussion as to what employees were eligible for membership in the union; what classifications of employees?

The Witness: Not in detail.

Trial Examiner Bokat: You say "not in detail", but in general?

(Testimony of Maxey M. Langford.)

The Witness: There were some questions which were brought up about sign painters, supervisors, executives and so on.

Trial Examiner Bokat: What, if anything, did you state to Mr. Powell regarding the individuals that you just mentioned?

The Witness: That at that time so far as any questions regarding the eligibility of supervisors, or those in an executive capacity, I was satisfied that we could sit down with the company and straighten that out.

Mr. Ball: If we are going to save time, if they describe what was said instead of using these general descriptions, I think [342] we will accomplish our purpose. These general descriptions do not picture it accurately. They picture the minds of the witnesses, and do not give us the facts.

Trial Examiner Bokat: All right, let us have what the witness said concerning the classifications and types of employees named by the union in that conversation, if the conversation did take place.

The Witness: I am unable to give it word for word.

Trial Examiner Bokat: I understand that. Not necessarily word for word; give us the substance of it.

The Witness: Well, the substance of the conversation was that we claimed jurisdiction over everyone in the retail store engaged in the selling and

(Testimony of Maxey M. Langford.)

the handling of merchandise, outside of those in an executive capacity.

Q. (Mr. Walker, continuing) Did Mr. Powell reply to that? A. Yes.

Q. What did he say?

A. He said he was not in favor of that, because that was still a form of union shop clause, and because it was contrary to the company policy he would not be able to go for it.

Q. Did you say anything after that?

A. Several times after that I requested some sort of a substitute proposal for that particular clause.

Q. Was there any portion of Board's Exhibit No. 7 discussed at that time? [343]

A. Well, while I was present, no. I left before the meeting broke up.

Q. Was there any discussion concerning the Retail Clerks before the matter of the agreement was taken up?

A. Well, the meeting was opened in this manner: Mr. Powell had a letter that Mr. Dixon had written to him regarding the fact that we had a majority of the Retail Sales people in the plant.

Mr. Ball: I move to strike out what the letter said, or what the witness says the letter said.

Trial Examiner Bokat: Yes, the letter will speak for itself.

Mr. Ball: It takes no more time to be accurate, than it does to go into these generalities.

(Testimony of Maxey M. Langford.)

Trial Examiner Bokat: It is received in evidence as a Board's exhibit,—Board's Exhibit 6, I believe.

The Witness: Board's Exhibit 6?

Trial Examiner Bokat: Here is a copy of the letter. I assume you are referring to the letter of October 2, 1940. Is that the letter that you referred to (indicating)?

The Witness: Yes, that is the letter.

Trial Examiner Bokat: All right.

A. (Witness continuing) Mr. Powell had a copy of Board's Exhibit 6, and he said that they were willing to go ahead and discuss the contract, or discuss the propositions in the contract on the basis of that letter. [344]

Q. (Mr. Walker, continuing) Was anything else said, or did anything else take place at that meeting of October 22?

A. Not that I can recall.

Q. Did you meet with the company again after that? A. Yes.

Q. When was the next time?

A. December 13.

Q. Did you take part in that meeting?

A. Yes, I was present at the meeting.

Q. Was a form of Board's Exhibit 7 before all the parties at that meeting?

A. No; I don't believe that we had a copy of it at that time.

(Testimony of Maxey M. Langford.)

(Whereupon a document was marked as Board's Exhibit 10 for identification.)

Q. (Mr. Walker, continuing) I hand you what has been marked as Board's Exhibit 10 and ask you if you have seen a copy of that before?

A. Yes, I have.

Q. Will you state what that is?

A. That is a duplicate copy of Board's Exhibit 7.

Q. Whose handwriting appears on Board's Exhibit 10? A. Mine.

Q. When were the marking made on there?

A. On December 16.

Q. Now, let us go back to the meeting of the 13th. What took [345] place at the meeting of the 13th?

A. The majority of the meeting was devoted to a general discussion as to ways and means of getting together to settle the strike.

Trial Examiner Bokat: Will you repeat that, please?

(Thereupon the answer of the witness was read aloud as above recorded.)

Mr. Ball: I again move to strike that as an opinion and conclusion of the witness. Can't we get concisely what was said, and who said it, and when?

Trial Examiner Bokat: Strike it out.

Q. (Mr. Walker, continuing) Who else was present at the meeting of the 13th?

(Testimony of Maxey M. Langford.)

Trial Examiner Bokat: I don't believe there is any dispute as to who was present. I think that was covered before.

Mr. Ball: That is right.

Mr. Walker: I know, but I am asking, or going to ask, what each party said at the meeting.

Mr. Ball: You don't need to go over who was there. You can identify them one by one as to what was said.

Q. (Mr. Walker, continuing) Did you take any part in the discussions of the meeting of the 13th?

A. Some discussion in the meeting of the 13th?

Q. Yes. A. Yes, I took some part. [346]

Q. What did you state at the meeting?

A. I think that the first question that I asked during the meeting was a question that I asked of Mr. Powell.

Q. What was that?

A. I asked him, assuming that we would be able to get together on a contract that would be agreeable to both sides, would he have the power to sign such a contract.

Q. Did he answer? A. He did.

Q. What did he say?

A. He answered "no"; he said he didn't have such power.

Q. What had gone on preceding that, that prompted your question?

Mr. Ball: Let me make a record. I move to strike the answer out as to the answer given by Mr.

(Testimony of Maxey M. Langford.)

Powell, as being irrelevant. That applies to both the question and the answer.

Trial Examiner Bokat: I will deny the motion at this time. Is there a pending question?

Mr. Walker: Yes, there is. Will you read it, Mr. Nelson?

(Thereupon the pending question was read aloud by the reporter as above recorded.)

Mr. Ball: Well, the same objection of irrelevancy to the subject matter.

Trial Examiner Bokat: I will have to overrule the objection. I don't know whether it is going to be material or not. I am [347] going to accept it subject to some connection with the issues.

A. What prompted me to ask that question was the fact that questions regarding different sections of the Warehousemen's contract, namely, Articles 1, 2 and 4, which had been discussed, and which were not acceptable, as to which counter proposals had been asked from the company; and at that time we had received no counter proposals.

Due to the fact that we were not receiving any definite answers, I wondered if we were dealing with anyone who had power to sign a contract if it was negotiated.

Mr. Ball: I move to strike that as an opinion and conclusion of the witness; and any statement that the witness might make as to what he thought certainly is not relevant to the issues and can have

(Testimony of Maxey M. Langford.)

not probative value. Let us get at the facts, and not generalities and conclusions and opinions of the witness concerning the state of mind of someone else, or concerning legal conclusions on matters which are subject to interpretation.

Trial Examiner Bokat: I will strike the part of the answer that has to do with the witness' mental operation, and the balance of the operation may stand.

Mr. Ball: I object for the further reason that any reference to a counter proposal and like statements involves questions of law, conclusions of law, and, as well, conclusions of fact.

Trial Examiner Bokat: I will have to overrule the objection. [348] I gather from the answer that someone had asked if the company was ready to make a counter proposal to the sections outlined by the witness; isn't that a fact?

The Witness: That is a fact.

Trial Examiner Bokat: Who had asked the question?

The Witness: Mr. Landye had asked the question, and also Mr. Estabrook.

Trial Examiner Bokat: Of whom?

The Witness: Mr. Powell.

Trial Examiner Bokat: What did Mr. Powell say, if anything?

The Witness: At that time, Mr. Powell stated that the company was not in a position and did not feel that he had anything to ask of the Union, and

(Testimony of Maxey M. Langford.)

as a result, at that time they didn't feel that they should make a counter proposal.

Mr. Ball: I move to strike the testimony about counter proposals, for the reason that that word has a legal significance, and the sense in which it is used is ambiguous, unless it is clearly shown that the meaning and intent of the term was clearly known to both the parties.

Trial Examiner Bokar: I was merely asking him if the term was used.

Mr. Ball: May I add the further reason for this motion, that the testimony that has been given on this subject is ambiguous, and it doesn't tend to prove or disprove any issue in the case. [349]

Trial Examiner Bokar: I will overrule the objection. Was the word "counter proposal" used by Mr. Landye when he asked the particular question of Mr. Powell?

The Witness: Yes.

Trial Examiner Bokar: That was the word that was used?

The Witness: Yes.

Mr. Ball: May it be understood that I have an objection to this entire line?

Trial Examiner Bokar: Yes, you may have an objection to this entire line of questions, Mr. Ball.

Mr. Ball: Thank you.

Q. (Mr. Walker, continuing) Did you attend the meeting of the 14th? A. Yes.

Q. Did you take any part in that meeting?

(Testimony of Maxey M. Langford.)

A. Very little part in the discussion at that time.

Q. What was it that you said?

A. I can't recall.

Q. About how long did the meeting last?

A. About 2 hours.

Q. Was Mr. Allen there at that time?

A. Yes, he was.

Q. Did Mr. Allen take any part in the meeting?

A. Yes, he did.

Q. Do you recall what he said? [350]

A. At one time during the meeting Mr. Allen asked Mr. Powell if the Company would be willing to sign a contract embodying the same hours, wages and working conditions for the striking employees that were in effect before the strike was called.

Mr. Ball: I move to strike the answer as being repetitions, having been gone over before, a number of times, and not the best evidence.

Trial Examiner Bokst: The motion is denied.

Q. (Mr. Walker, continuing) Was that question answered? A. It was.

Q. By whom? A. Mr. Powell.

Q. What did he say?

A. He said that they might consider it.

Q. Was anything further said on that matter?

A. I think that one of the company representatives, I believe Mr. Denecke, asked if that was the proposal of the union.

(Testimony of Maxey M. Langford.)

Q. Was that question answered?

A. It was.

Q. By whom? A. Mr. Allen.

Q. What was the answer? A. "No".

Q. Did you attend the meeting of the 16th?

A. Yes, I did. [351]

Q. Did you take any part in that meeting?

A. Yes, I did.

Q. Were copies of Board's Exhibit 7 before the persons present? A. Yes.

Q. Did you have a copy of it?

A. Yes, I did.

Q. What copy did you have beforehand?

A. Board's Exhibit 10.

Q. Will you refer to Board's Exhibit 3, please. Were copies of it before the persons present at that meeting? A. Yes.

Q. How did that meeting open up?

Trial Examiner Bokat: Before we get to that, was there any other contract present?

Mr. Walker. Yes, there was.

Trial Examiner Bokat: I will ask the question of the witness.

The Witness: Yes, there was.

Trial Examiner Bokat: What copies?

The Witness: The proposed contract of the office employees.

Trial Examiner Bokat: Now, I think that there is a pending question.

(Testimony of Maxey M. Langford.)

Mr. Allen: Let me ask for my information: has that Office Employees' contract been offered or identified as an exhibit?

Trial Examiner Bokat: Not yet.

Mr. Ball: Do you propose to do that? [352]

Mr. Walker: Yes.

Mr. Ball: That is what I wanted to know: if not, I want it in this record.

Trial Examiner Bokat: Is there a pending question?

(Thereupon the pending question was read aloud by the reporter as above recorded.)

A. At that time, Mr. Ashe, the Federal Conciliator, suggested that we sit down at the table with the three different contracts and go down the contracts, clause by clause.

Q. Which agreement was taken up first?

A. The Warehousemen's agreement.

Q. Was there anything said concerning the relationship between the Warehousemen's agreement and the other contracts?

A. Not at that time; not that I can recall.

Q. Later on in that meeting? A. Yes.

Q. I see. Now, after the Warehousemen's contract was gone through, what next was taken up?

A. The Office Employees' contract.

Q. Was anything said about the Office Employees' contract?

A. Yes. I asked the question of Mr. Powell, with

(Testimony of Maxey M. Langford.)

regard to this contract, the same as I had asked him regarding the Warehousemen's contract.

Q. And what was that?

A. I asked Mr. Powell if there was at that time any clause or [353] clauses in the Office Employees' contract that would be acceptable to the company, without change or revision in any form whatsoever.

Q. Did he answer that? A. He did.

Q. What did he say?

A. He said there were no such clauses.

Trial Examiner Bokar: Which contract was that?

The Witness: The Office Employees.

Q. (Mr. Walker, continuing) After the Office Employees' contract was taken up, what next was taken up?

A. The Retail Clerks' contract.

Q. Was there anything said about the Retail Clerks' contract?

A. I asked Mr. Powell the same question regarding the Retail Clerks' contract.

Q. That is, the same question that you had asked Mr. Powell regarding the Office Employees' contract? A. Yes.

Q. Did he answer that, regarding the Retail Clerks' contract? A. Yes.

Q. What did he say?

A. He said there were a few clauses that he believed the company could accept, and one or two

(Testimony of Maxey M. Langford.)

that might be acceptable with one or two minor changes.

Q. Then what did you do? [354]

A. We went down the contract, clause by clause, eliminating from the discussion the clauses that were acceptable to the company. That is, we eliminated any discussion on them after we found out that they were acceptable.

Q. When the clauses which were acceptable were ascertained, what did you do?

A. I made notations on the margin of the contract.

Trial Examiner Bokar: Then and there?

The Witness: How is that?

Trial Examiner Bokar: Then and there?

The Witness: Then and there, yes.

Q. (Mr. Walker, continuing) And then you went through the agreement, clause by clause?

A. That is right.

Q. What discussion was there,——

Mr. Ball: This is the Clerks' contract, that is, Board's Exhibit 7, isn't it?

Trial Examiner Bokar: The Retail Clerks' contract is Board's Exhibit 7 and the Warehousemen's contract is Board's exhibit 3. The Office Employees' contract has not yet been offered.

Q. (Mr. Walker, continuing) Was there anything said regarding section 1? A. Yes.

Q. What was the discussion at that time? [355]

(Testimony of Maxey M. Langford.)

A. That the company would not accept any form of union shop contract.

Q. Who said that? A. Mr. Powell.

Q. What happened after that? What was said?

A. We went on to the next paragraph.

Q. Section 2? A. That is correct.

Q. Was there any discussion on it?

A. Very little.

Q. What was said?

A. Mr. Powell stated that there would have to be some changes made in that particular clause before it would be acceptable.

Trial Examiner Bokar: Did he indicate what changes?

The Witness: No, he didn't.

Q. (Mr. Walker, continuing) What did the representatives of 1257 say to that, if anything?

A. Nothing.

Q. What did you do then?

A. We went on to the next paragraph.

Q. Section 3? A. Section 3.

Q. Was there any discussion on it?

A. A little.

Q. What was said? [356]

A. Mr. Powell stated that the company could not go for that, as it was written.

Q. Did he indicate what part of it was not acceptable? A. Not that I can recall.

Q. Did any of the representatives of 1257 say anything to that? A. No.

(Testimony of Maxey M. Langford.)

Q. Then what did you do?

A. We went on to Section 4.

Q. Was there any discussion on it?

A. There was.

Q. What was it?

A. Mr. Powell stated that if Armistice Day was stricken out of the proposed holidays, and Thanksgiving Day substituted, he believed the Company would accept the clause.

Mr. Ball: Just a moment. May we go off the record?

Trial Examiner Bokat: Off the record.

(Discussion off the record)

Trial Examiner Bokat: Will you read the last question, Mr. Reporter?

(Thereupon the last question was read by the reporter as above recorded.)

Trial Examiner Bokat: May I state for the record that Board's Exhibit 7 includes both Armistice Day and Thanksgiving Day; I don't understand the answer of the witness, and I will ask him [357] to look at Board's Exhibit 3 and Board's Exhibit 7.

The Witness: It is possible the typist made a mistake.

Trial Examiner Bokat: Off the record.

(Discussion off the record)

Trial Examiner Bokat: Now, have you any explanation to make of that, Mr. Langford?

The Witness: I have examined it, and the only

(Testimony of Maxey M. Langford.)

way that I can explain is that the typist who made up the copies omitted in Board's Exhibit No. 10 the holiday section.

Trial Examiner Bokat: The holiday section is not included in Section 4 of the copy which you have?

The Witness: That is right.

Trial Examiner Bokat: I understand that the copy that Mr. Ball has does have Thanksgiving, and does exclude Armistice Day. Is that correct?

Mr. Ball: That is correct.

Trial Examiner Bokat: When the Company said that if the Union would agree to substituting Thanksgiving for Armistice Day, the clause would be acceptable, what did the Union say? First, am I correct in understanding that the company said they would accept the clause, if that substitution was made?

The Witness: Yes.

Trial Examiner Bokat: What did the Union reply to that?

The Witness: I don't remember any particular reply.

Trial Examiner Bokat: No particular objection or suggestion? [358]

The Witness: No.

Q. (Mr. Walker, continuing) What did you do next? A. We went on to Section 5.

Q. Was there any discussion on it?

A. Some, at that time.

(Testimony of Maxey M. Langford.)

Q. What was said?

A. That the company would be unable to recognize seniority.

Q. Any reasons given?

A. Contrary to their company policy.

Q. Who said that?

A. I believe Mr. Powell and Mr. Huddleston, both.

Q. Both of them made that statement?

A. I believe so, yes.

Q. Did 1257 say anything to that?

A. Not at that time, no.

Q. Then what did you do?

A. We went on to Section 6.

Q. Was there any discussion on it?

A. Mr. Powell stated that the company would be unable to accept that.

Q. Did he indicate any reason?

A. Not that I recall.

Q. What did 1257 do after that?

A. We went on to Section 7.

Q. Was there any discussion on that? [359]

A. No particular discussion that I can recall.

Q. Did any of the representatives of Montgomery Ward & Company state whether or not that was acceptable?

Mr. Ball: Just a minute. Will you read the question?

(Thereupon the pending question was read aloud by the reporter as above recorded.)

(Testimony of Maxey M. Langford.)

A. If I remember correctly, I believe Mr. Powell stated that they were abiding by the Wagner Act on that particular clause.

Trial Examiner Bokat: Was there any objection to the clause remaining as it was?

The Witness: Not that I recall, offhand.

Trial Examiner Bokat: All right; let's go to the next one.

Q. (Mr. Walker, continuing) What did Local 1257 say to Mr. Powell's statement?

A. Nothing that I can recall.

Q. Was there any discussion on Section 8?

A. Yes.

Q. What was it?

A. Mr. Powell stated that the company would be unable to accept that, due to the fact that they didn't want any union representative talking to their people while they were working on their jobs.

Q. Did 1257 say anything to that?

A. Not that I can remember.

Q. Then what did you do? [360]

A. We went on to the next clause, Section 9.

Q. Just one thing more. Did Mr. Powell say anything further after he had indicated the company's position respecting Section 8?

A. Not that I can recall.

Q. All right. Was there any discussion on Section 9? A. Yes.

Q. What was it?

(Testimony of Maxey M. Langford.)

A. Mr. Powell stated that that was not acceptable.

Q. Did he give any reason?

A. Not that I can remember.

Q. And then what did you do?

A. We went on to Section 10.

Q. Was there any discussion on it?

A. Very little discussion on the majority of it, or on the majority of the rest of the clauses.

Q. Well, on Section 10, what was said about it?

A. There was very little discussion on it.

Q. Well, was it agreeable or was it not?

A. It was not acceptable to the company.

Q. It was not? A. No.

Q. Then what did you do?

A. We went on to Section 11.

Q. Was there any discussion on it? [361]

A. Well, it was not acceptable to the company.

Q. Who said that? A. Mr. Powell.

Q. Any reason given? A. No.

Q. Then what did you do?

A. We went on to Section 12.

Q. Was there any discussion on it?

A. Merely that it was not acceptable to the company.

Q. Who said that? A. Mr. Powell.

Q. Any reason given?

A. Not that I can recall.

Q. Then you took up Section 13?

A. That is correct.

(Testimony of Maxey M. Langford.)

Q. What was said about it?

A. Mr. Powell stated that with the substitution of the word "six" and "6" for the "5", which was written into the section, he believed that it would be acceptable to the company.

Q. Did 1257 say anything to that?

A. Not that I can recall.

Q. Was there any discussion on Section 14?

A. Mr. Powell stated that that would be unacceptable to the company.

Q. Any reason given? [362]

A. Not that I can recall.

Q. Then what happened?

A. We went on to Section 15.

Q. Was there any discussion on it?

A. Yes.

Q. What was said?

A. Mr. Powell said that would be acceptable to the company.

Q. And then you went on to Section 16?

A. Yes.

Q. What was said about that?

A. He said it would be unacceptable to the company.

Trial Examiner Bokar: Off the record.

(Discussion off the record)

Q. (Mr. Walker, continuing) Was there any discussion on Section 15? A. Yes.

Q. What was it?

(Testimony of Maxey M. Langford.)

A. He stated that the clause would not be acceptable to the company.

Q. Any reason given?

A. If I remember correctly, his objection was as to the Adjustment Board as set up in Section 16.

Q. Did he give any reason for his objection to the Adjustment Board?

A. If my memory serves me correctly, Mr. Hudleston stated that [363] he thought that the company should have the final and sole word regarding the discharge of employees.

Q. Was there anything else said about Section 16, on the Adjustment Board matter?

A. Not at that time.

Q. Then what did you do?

A. We went to Section 17.

Q. What did you do about that?

A. Mr. Powell stated that that would be acceptable to the company.

Q. And then you passed on to Section 18?

A. That is right.

Q. Was there any discussion on that?

A. Yes, sir.

Q. What was the result of the discussion, or what was the discussion?

A. Mr. Powell stated that he could not accept it.

Q. Any reason given? A. No.

Q. What did you do?

A. We went on to Section 19.

(Testimony of Maxey M. Langford.)

Q. Was that acceptable or unacceptable?

A. That was acceptable.

Q. And then you went to Section 20?

A. That is correct.

Q. What took place on Section 20? [364]

A. That was another clause that was not acceptable.

Q. For what reason, if any?

A. Not that I can remember; I can't remember any.

Q. And then you went to Section 21?

A. That is correct.

Q. And what about it?

A. It was another section that was not acceptable.

Q. For what reason?

A. None that I can remember.

Q. What was said about Section 22?

A. I don't remember.

Q. I beg your pardon?

A. I don't remember. I don't recall any particular discussion on that clause.

Q. And then you took up Section 23?

A. That is correct.

Q. What occurred while discussing it?

A. I don't remember; frankly, I don't remember much more discussion on that one, or the next one.

Q. On either 23 or 24?

A. That is correct.

Q. Was there any discussion on Section 25?

(Testimony of Maxey M. Langford.)

A. Some, yes.

Q. What was it?

A. That is another clause that was not acceptable to the company.

Q. Any reason given? [365]

A. None that I remember.

Trial Examiner Bokat: May I direct your attention to sections 23 and 24. Even though you don't recall any discussion, do you know whether those clauses were acceptable to the company?

The Witness: The reason I don't know is because I was talking to another party during the course of the discussion of those clauses in another part of the room.

Trial Examiner Bokat: So you made no notation?

The Witness: That is right.

Trial Examiner Bokat: As to whether or not the company was willing to accept them?

The Witness: That is right.

Trial Examiner Bokat: That would apply to Section 22, as well?

The Witness: That is right.

Trial Examiner Bokat: All right, proceed.

Q. (Mr. Walker) What was the discussion on Section 26?

A. I don't remember any particular discussion.

Q. Was it acceptable or not?

A. As a whole, if I remember correctly, that was not acceptable.

(Testimony of Maxey M. Langford.)

Q. Any reason given?

A. No, not that I recall.

Q. What about Section 27?

A. That clause was not acceptable to the company. [366]

Q. Any reason given?

A. Not that I can recall.

Q. What about Section 28?

A. Section 28 was acceptable to the company.

Q. And then you took up section 29?

A. That is correct.

Q. What was said about it?

A. That clause was not acceptable to the company.

Q. What was the reason given, if any?

A. None that I remember.

Q. What about Section 30?

A. I believe that we discussed sections 30 and 31 together.

Q. What was said concerning sections 30 and 31?

A. Regarding Sections 30 and 31, Mr. Powell stated that the company would not grant any increase in wages.

Q. Any reason given?

A. Not at that time, no.

Q. Did 1257 say anything to that?

A. I can't recall that we did, no.

Q. Did you take up section 32 next?

(Testimony of Maxey M. Langford.)

A. Yes, we did. The same thing applied to Section 32 as did to Sections 30 and 31.

Q. So you passed over that to Section 33?

A. Yes.

Q. On sections 30 and 31, you stated that Mr. Powell said that [367] the company could not grant any increase in wages? A. That is correct.

Q. And you also stated that your answer respecting Section 31 also applied to Section 32?

A. That is correct.

Q. Will you explain that?

A. That the company would not grant any increase in wages for the people classified in Section 32.

Q. Now, what about Section 33?

A. Mr. Powell stated that the company would not grant any increase in pay to any persons that would be covered by that section.

Q. Did Mr. Powell give any reason?

A. No.

Q. Did 1257 say anything to that? A. No.

Q. Then what did you do?

A. We went on to Section 34.

Q. What was said about that?

A. The company would not grant any increase in pay to any employee covered by that section.

Q. Mr. Langford, will you examine sections 35, 36 and 37, and 38. Now, with respect to sections 35, 36 and 37, what was the position of the company?

(Testimony of Maxey M. Langford.)

A. The position of the company was still the same. [368]

Q. What was that?

A. That they would not grant any increase in pay.

Trial Examiner Bokar: We will take a ten minute recess at this time.

(Whereupon, at this time a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Bokar: The hearing is now in session.

Q. (Mr. Walker, continuing) Now, with respect to Section 38, what took place on that?

A. I don't recall any particular discussion on paragraph A of Section 38.

Q. Was it acceptable or not?

A. I can't recall that it was.

Q. What about Section B?

A. That was not acceptable to the company.

Q. Any reason given?

A. The reason given was that the company was not going to grant any increase in pay.

Q. What about Section 39?

A. Section 39 was not acceptable to the company.

Q. What was the reason given, if any?

A. That the company was not in favor of an arbitration board.

(Testimony of Maxey M. Langford.)

Q. Did they give any reason why?

A. The reason why was that they wanted to have the final word in case a dispute arose. [369]

Q. Who said that? A. Mr. Huddleston.

Q. Did 1257 say anything further?

A. Not that I recall.

Q. Was Section 40 discussed?

A. I don't recall any particular discussion on Section 40.

Q. Was that acceptable or not?

A. I don't remember.

Q. Was 41 taken up?

A. I believe that it was.

Q. Was anything said about it?

A. Not that I recall.

Q. After the agreement had been gone through, what next occurred at the meeting of the 16th?

A. The meeting broke up immediately afterwards.

Q. Was anything said by anybody just before it broke up?

A. Mr. Ashe of the Federal Labor Bureau made the statement that he would have to make some sort of a report to his office in Washington; and, also, that he had to have a statement for the press, and that he wanted to clarify in his own mind some of the major objections towards the proposed contract. Mr. Ashe made notes to the effect that the company would not agree to any form of union shop clause.

(Testimony of Maxey M. Langford.)

that they would not recognize seniority, that they would not grant any increases in pay, and that they refused to accept any form of arbitration unless they [370] were granted the right of having the final word on such arbitration.

Q. How do you know that took place?

A. I saw Mr. Ashe take the notes, and I heard the questions asked of Mr. Huddleston.

Q. I don't quite understand you. What questions did he ask of Mr. Powell and Mr. Huddleston?

A. He asked Mr. Powell and Mr. Huddleston if they would recognize any form of union shop clause.

Q. Was that question answered? A. Yes.

Q. What was the answer to it?

A. The answer was "no".

Q. What next did Mr. Ashe ask?

A. He asked if the company would recognize seniority rights.

Q. Was that question answered?

A. After considerable discussion, yes, it was answered.

Q. What was the answer?

A. The answer was "no".

Q. What was the discussion that preceded the negative answer?

A. Trying to qualify what seniority was, or to clarify it.

Q. Can you relate what was said in that regard by Mr. Powell and Mr. Huddleston?

(Testimony of Maxey M. Langford.)

A. Mr. Powell and Mr. Huddleston both stated that there were too many other things, such as marital status, adaptability, [371] promotability, and so on, to be considered before seniority could enter into the picture. [372]

Q. (Mr. Walker continuing) Were any other questions asked of Mr. Ashe?

A. Mr. Ashe asked the company representatives if the company would grant any increases in pay.

Q. Was that question answered?

A. It was.

Q. What was the answer?

A. The answer was, No.

Q. What next did Mr. Ashe ask?

A. Mr. Ashe asked if the company would agree to any form of arbitration or adjustment board?

Q. And was that question answered?

A. That question was answered, yes.

Q. Who answered it?

A. Mr. Powell, or Mr. Huddleston.

Q. What was the answer?

A. The answer was, No.

Q. Now, after those questions were propounded by Mr. Ashe, what next took place?

A. Mr. Ashe made the statement that he was going to leave for San Francisco, and he could see no further reason for holding any more meetings in Portland because he didn't feel the company was dealing in good faith.

(Testimony of Maxey M. Langford.)

Mr. Ball: Just a minute. The testimony of what Mr. Ashe expressed as his opinion about the company should be stricken [373] as an opinion and conclusion of Mr. Ashe.

Trial Examiner Bokat: Yes.

Mr. Walker: Well, Mr. Examiner, I submit that Mr. Ashe,—as his title indicates,—is a person possessing experience, and is an expert; and if he made such a statement at the meeting in the presence of the respondent,——

Trial Examiner Bokat: Do you expect me to be bound by what Mr. Ashe's opinion was, or am I to be bound by my own opinion?

Mr. Walker: I know that Mr. Ashe's opinion is not a matter upon which a finding could be predicated.

Trial Examiner Bokat: That is the very reason I am sustaining the objection.

Mr. Walker: I submit it has some probative value to be taken and weighed in consideration with all the other factors.

Trial Examiner Bokat: I think you make the point, Mr. Walker; but I am going to sustain the objection.

Mr. Ball: I might add to the objection, that it is also hearsay.

Trial Examiner Bokat: Well, something that was said in the presence of all the parties, I don't see how it possibly could be hearsay.

(Testimony of Maxey M. Langford.)

Q. (Mr. Walker continuing) After making that statement, what did Mr. Ashe do?

A. The meeting broke up immediately following that. [374]

Mr. Ball: Well, I move to strike that, "after making that statement", because that refers to a statement which, in itself, has been stricken from the record.

Trial Examiner Bokat: That is not physically stricken. Well, the meeting broke up subsequently?

The Witness: That is correct.

Q. (Mr. Walker continuing) Did any of the representatives of the respondent say anything further to Mr. Ashe before he left the room?

A. Not that I can remember.

Mr. Walker: That is all.

Trial Examiner Bokat: Any questions, Mr. Landye?

Mr. Landye: No questions.

Trial Examiner Bokat: Proceed, Mr. Ball.

Cross Examination

Q. (Mr. Ball) Going back, Mr. Dixon, to the meeting of August 30th. You recall, do you not, in addition to the matters that you testified to as occurring at that meeting, that a question was raised as to appropriate unit?

A. For the sake of the record, Mr. Ball, my name is Langford. You called me Dixon.

Mr. Ball: I beg your pardon, Mr. Langford.

(Testimony of Maxey M. Langford.)

A. I don't recall any discussion of the appropriate unit at that time, no.

Q. When you say you don't recall the fact, you have no definite [375] recollection that such did not take place? A. No.

Q. Then the next meeting that you recall is the meeting of October 22nd?

A. That is correct.

Q. You recall that Mr. Powell, at the beginning of that meeting, asked for the exact percentage of the number of employees that the two unions there present had signed up?

A. I believe he asked that question, yes.

Q. And that those figures were given by Mr. Hicks and Mr. Dixon?

A. I believe they gave those figures, yes.

Q. You also recall that Mr. Dixon stated, at that meeting, with regard to Section 1, that it was a very important clause because there had been insistence on the part of the conference in Cleveland the previous summer that that be included in all contracts?

A. I believe Mr. Dixon made the statement, yes.

Q. As a matter of fact, that clause is included in a large number of contracts you have in the Portland area? A. That is true.

Q. Do you recall how many contracts you have that include that clause here?

A. In the Portland area all of our contracts contain that clause. [376]

